2573

SUPREME COURT OF THE UNITED STATES.

No. 76.

LATHROP L. STURGIS, PL'FF IN ER.,

VS.

CHRISTIAN HONOLD.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

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UNITED STATES OF AMERICA,
Eastern District of the State of Louisiana,
City of New Orleans.

CHRISTIAN HONOLD
vs.
LATHROP L. STURGES. } No. 2393.

Pleas and proceedings before the honorable the Circuit Court of the United States for the fifth circuit and eastern district of Louisiana, at the April term, A. D. 1855, of the said Court, held at the city of New Orleans, in the district aforesaid, on the first day of May, A. D. 1855.

Be it remembered, that heretofore, to wit, on the ninth day of November, A. D. eighteen hundred and fifty-four, came Lathrop L. Sturges, by his attorneys, Messrs. Wolfe & Singleton and Messrs. Durant & Hornor, in the clerk's office of the said Circuit Court, and filed a transcript of a record from the Second District Court of New Orleans, which said transcript is in words and figures as follows, viz:

UNITED STATES CIRCUIT COURT,
Fifth Circuit, Eastern District of Louisiana.

CHRISTIAN HONOLD
vs.
LATHROP L. STURGES. } No. 2393.

Transcript. Filed 9th Nov., 1854.

From the State Court.

STATE OF LOUISIANA,
Second District Court of New Orleans.

CHRISTIAN HONOLD
vs.
LATHROP L. STURGES. } No. 7725.

Petition.

To the honorable the judge of the Second District of New Orleans:

The petition of Christian Honold, who resides in the city of New Orleans, respectfully represents, that, at said New Orleans, on or about the 18th February, 1854, petitioner bought of Lathrop L. Sturges, who resides in the city of New York, but who was rep-

resented in New Orleans by his duly authorized agents and attorneys in fact, Messrs. Bogart, Williams, & Co., five-sixteenths of a certain ship called the "Ashland," then lying at the port of New Orleans, of the burthen of 631$\frac{2}{95}$ tons or thereabouts, for the sum and price of $8,593^{75}, being five-sixteenths of the price of $27,500 paid for the whole of said ship, as appears from the act of sale, a copy of which is annexed for reference.

Your petitioner further shews, that, at time of the contract for the purchase aforesaid was made, and the said ship taken into possession of pet'r, the said ship had already a part of her cargo on board, for an intended voyage to Havre, France, and that it was consequently impracticable to make any examination or inspection of the condition of said ship; but that, from the representations made to pet'r, he believed, and was authorized to believe, that the said ship was sound and seaworthy, and in all respects fitted for her proposed voyage, andthat the said ship was worth the price paid therefor; that, accordingly, the said ship having taken a full cargo on board, sailed on or about the 3d February, 1854, on her voyage to Havre. That on or about the 5th of February the ship was discovered to be making a great deal of water; that the leak continued to increase, till, on the 10th February, it was found necessary, on account thereof, to return to the port of New Orleans, where said ship arrived, and was moored again on the 16th February, 1854.

That a survey was therefore held upon the said ship, which was ordered into the dock for repairs, and upon a further examination, it was discovered that the timbers of the ship on both sides were entirely decayed and rotten, from the turn of the bow forward to the after end of the mizzen chains aft; and that it was also discovered, on taking off the bends for the purpose of putting in the new timber required, that the ship had been previously opened and found defective, and that short pieces of wood had been placed in amongst the rotten timber to hold the fastening of the plank.

Petitioner further shows, that the defective *consideration* of said ship as herein stated greatly diminished its value, and rendered it altogether unseaworthy, and unfitted for the intended voyage without great and expensive repairs; that, in consequence of said defects, petitioner has sustained loss and damage and has incurred expenses to the extent of $20,000, and that, as he is advised and believes, the amount will be yet further increased to the full aggregate sum of $25,000.

Petitioner further avers, that the said defective condition of the ship "Ashland" was fully known to the said Lathrop L. Sturges, and to his joint owners, and that he fraudulently concealed the same from pet'r, and combined, conspired with his joint owners, to suppress the knowledge thereof, for the purpose of defrauding pet'r, and that, as pet'r is advised and believes, the said Lathrop L. Sturges is therefore responsible to pet'r, jointly and severally

with the other owners of the said ship, for the full amount of $25,000 as aforesaid.

Pet'r further shews, that he has, under date of the 25th April inst., 1854, made his affidavit that the said Lathrop L. Sturges is indebted to him in the sum of $20,000, and the whole amount which petitioner was able to declare under oath as now due by the said Lathrop L. Sturges, as vendor of five-sixteenths of said ship; that he has also filed the bond required by law, and has sent out an attachment against the said Lathrop L. Sturges.

Wherefore pet'r prays that said attachment be maintained; that an attorney be appointed to represent the said absent defendant; that he be served with a copy of this petition, and cited to appear and answer; and after all due proceedings had, that the said Lathrop L. Sturges be ordered and adjudged to pay to pet'r the full sum of $25,000, with legal interest and costs, with privilege to the extent of $6,250 on the property attached, and for general aid and relief.

(Signed) BENJAMIN, BRADFORD, & FINNEY,
Att'ys.

"Citation."

STATE OF LOUISIANA,
Second District Court of New Orleans.

Mr. Lathrop L. Sturges, who resides out of the State:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the Second District Court of New Orleans in ten days after the service hereof.

Witness the Hon. J. N. Lea, judge, of the year of our Lord 1854.

(Signed) O. MOREL,
D'y Clerk.

CHRISTIAN HONOLD
vs.
LATHROP L. STURGES. } No. 7725.

Sheriff's return.

Rec'd 27th April, 1854, and on the same day posted copy of the within citation to the order of the church of St. Louis, of Orleans, in the city of New Orleans, and to that of the room in which this hon. Court is held. Returned 28th April, 1854.

"Signed" P. P. LABAM,
Dy. Shff.

"*Affidavit.*"

CHRISTIAN HONOLD
vs.
LATHROP L. STURGES. } Second District Court.

Christian Honold, pl'ff herein, being duly sworn, saith that the said defendant, Lathrop L. Sturges, is justly and truly indebted to this affiant in the full sum of six thousand two hundred and fifty dollars, which sum is now due and payable, and that the said Lathrop L. Sturges resides permanently out of the State of Louisiana, viz, in the State and city of New York.

(Signed) CH. HONOLD.

Sworn to and sub'ed before me this 25th April, 1854.
Signed OCTAVE MOREL,
Dy. Clerk.

"*Order.*"

Let a writ of attachment issue in this case, as within prayed for, and according to law, on the plaintiff's giving bond and security in the sum of eleven thousand dollars, said bond conditioned as the law directs. New Orleans, 25th April, 1854.

Signed A'RE DERBES,
Clerk.

"*Bond.*"

Know all men by these presents, that we, Christian Honold, as principal, and A. Bergerot, as security, are held and firmly bound unto Lathrop L. Sturges, of New York, in the sum of eleven thousand dollars, to be paid to the said Lathrop L. Sturges, his heirs, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, or administrators and executors firmly by these presents. Sealed with our seals, and dated on this 25th day of April, 1854.

Whereas the above bound Christian Honold has applied to the honorable the second district Court of New Orleans for a writ of attachment against said Lathrop L. Sturges:

Now the condition of the above obligation is, that we, the above Christian Honold, as principal, and A. Bergerot, as surety, will well and truly pay to the said defendant in said attachment *was* wrongfully obtained.

"Signed" CH. HONOLD,
AM. BERGEROT.

Signed, sealed, and delivered in presence of—
CH'S A. TAYLER.

Writ of attachment.

THE STATE OF LOUISIANA,
Second District Court of New Orleans.

The State of Louisiana to the sheriff of the parish of Orleans, greeting:

Whereas, due process has been made before the second district Court of New Orleans, by Christian Honold, that Lathrop L. Sturges is indebted to him in the sum of six thousand two hundred and fifty doll's, $6,250, and that the said Lathrop L. Sturges resides permanently out of the State of Louisiana: now, therefore, you are commanded, in the name of the State of Louisiana and of the second district Court of New Orleans, to seize and *attach*, according to law, and take unto your possession the goods and chattels, land and tenements, rights and moneys, effects and credits of the said Lathrop L. Sturges, if any you find in said parish, to the amount of what will suffice to discharge the said debt and costs of suit, and that you give notice of this proceeding by having a copy thereof at the last place of abode of the said defendant, if in said parish, and causing a copy thereof to be affixed at the door of the parish church of said parish, and make a return of this writ, and endorse thereon the manner in which you have executed it before our Court, on or before the 3d Monday of June, in the year of our Lord 1854.

(Signed) OCTAVE MOREL,
Dy. Clerk.

Clerk's office, 23d day of April, 1854.

"*Sheriff's return.*"

Rec'd 25th April, 1854, and on same day attached the ship "Owego," her tackle, apparel, and furniture, or rather one-sixteenth of the defendant, Lathrop L. Sturges, in said ship, and also on the same day posted a copy of this writ to the door of the church of St. Louis, of Orleans, in the city of New Orleans, and to that of the room in which this hon. Court holds its sittings, and which said ship was released on the 4th May inst.—the master, G. G. Stevens, having executed bond in the sum of three thousand seven hundred and fifty dollars, being the one-half above the appraised value of defendant's interest in the ship, with John O. Woodruff & Co. as securities, conditioned according to law, and which bond is herewith returned this 4th of May, 1854.

Signed S. BLOSSMAN,
Dy. She'ff.

"*Bond.*"

Know all men, that we, G. G. Stevens, master of the ship

"Owego," for himself and owners, as principal, and John C. Woodruffs & Co., as securities, are held unto Mandeville Marigny, sheriff of the parish of Orleans, in the State of Louisiana, in the penal sum of three thousand seven hundred and fifty dollars, ($3,750,) for the payment whereof to the said Mandeville Marigny, sheriff, his executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators respectively by these presents; as witness our respective names hereunto affixed, at New Orleans, this 4th day of May, in the year of one thousand eight hundred and fifty-four.

Whereas, in and by virtue of a writ of attachment issued out of the honorable the 2d district Court of New Orleans, at the suit of Christian Honold vs. Lathrop L. Sturges, and numbered 7725 on the docket of said Court, and which suit is now pending therein, the following described property, to wit, the interest of Lathrop L. Sturges in the ship "Owego," being one-sixteenth just, and which ship was appraised under a consent of parties at the sum of forty thousand doll's, being $2,500 for the 1-16 part, has been seized, taken unto the custody of the said sheriff, and detained according to law; but the same has been released and the attachment thereon set aside upon the appearance of the master of said ship, and delivering to the said Mandeville Marigny the present obligation.

The condition of which is such, that if the said defendant shall satisfy such judgment as may be rendered against him, to the value of the property attached in the suit pending as above mentioned, then this obligation to be void, or else to remain in full force.

Signed JOHN O. WOODRUFF & CO.,
By A. MONETRU.

Signed, sealed, and delivered in presence of—
J. P. WALDEN.

"*Renunciation.*"

I do hereby assign, transfer, and set over to Christian Honold all my right, title, and interest in and to the within obligation.

New Orleans, May 4th, 1854.

Signed P. BLOSSMAN,
Deputy Sh'ff.

Defdt. motion to remove to Circuit Court.

SECOND DISTRICT COURT OF NEW ORLEANS.

CHRISTIAN HONOLD,
vs.
LATHROP L. STURGESS.

To the honorable the judge of the Second District Court of New Orleans.

The petition of Lathrop L. Sturgess, who is a citizen of the State

of New York, respectfully represents, that a suit has been instituted in this honorable Court against your petitioner by one Christian Honold, who is a citizen of the State of La., in which suit a writ of attachment has issued, under which the property of your pet'r has been seized by the sheriff of this parish.

That pet'r, desirous of removing this cause for trial unto the next Circuit Court of the United States to be held in this district, and now comes unto this hon. Court for the said purpose only, and here, at the time of first entering his appearance, offers his bond in the sum of five hundred dollars, with good and sufficient security for his entering in the said Circuit Court of the United States for the eastern district of Louisiana, on the first day of the next session thereof, copies of the petition and citation, and of all other process in this suit against him, and this appearer pet'r shows to the hon. Court that the matter in dispute exceeds the sum or value of five hundred doll's in this suit.

Wherefore, pet'r prays, the premises being considered, this hon. Court may accept the bond and security now offered, and proceed no further in the cause, and may direct this cause to be transferred to the Circuit Court of the United States for the eastern district of Louisiana next to be holden in this district; and he prays for all such other aid, relief, remedy, and process as the nature of his case may require and law permit.

Signed DURANT & HORNOR,
Atty's for App. and Petitioner.

Francis W. Williams being sworn, deposes and says, that he is a member of the firm of Bogert, Williams, & Co., who are the agents and attorneys in part of the pet'r and app'r, Lathrop L. Sturgess, and that all the allegations in the foregoing pet'on contained are true.

Signed F. W. WILLIAMS.

Sworn to and subscribed before me, this 1st day of May, 1854.
Signed J. W. JONTE,
Justice of the Peace.

"*Rule.*"

CHRISTIAN HONOLD
vs.
LATHROP L. STURGES. } Second District Court.

On motion of Durant & Hornor, atty's for Lathrop L. Sturgess, and on showing to the Court that the defendant has filed his petition herein, praying for the removal of this cause to the United States Circuit Court for the eastern district of La.—

It is therefore now ordered by the Court, that Christian Honold, pl'tff herein, do show cause, on Wednesday next, the 3rd day of

May, 1854, at 10 o'clock a. m., why this suit should not be removed as prayed for, and the security offered be accepted.

Sheriff's return.

Rec'd May 1st, 1854, and on the 2nd day of same month and year served a copy of the within rule personally on Mr. J. B. Finney, a member of the law firm of Benjamin, Bradford, & Finney, attorneys for the plaintiff, Christian Honold.

Returned same day.

"Signed" P. P. LABAIRE,
Dy. Sheriff.

"*Bond.*"

SECOND DISTRICT COURT OF NEW ORLEANS.

CHRISTIAN HONOLD
vs.
LATHROP L. STURGES.

Know all men by these presents, that we, Lathrop L. Sturges, as principal, and as security, are held unto Christian Honold, a citizen of the State of Louisiana, in the penal sum of five hundred dollars, for the payment whereof to the said Christian Honold, his executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators respectively by these presents, as witness our hands this fourth day of May, 1854.

Now, the condition of this obligation is, that if the above bound Lathrop L. Sturges enter in the Circuit Court of the United States for the eastern district of La., on the first day of its next session, copies of the petition and citation, and of other process in this suit against him, and there regularly enter his appearance, then this obligation shall be void, or else remain in full force.

Signed LATHROP L. STURGES,
By DURANT & HORNOR,
Att'eys.
F. W. WILLIAMS.

Witness—
C. W. HORNOR.

"*Order—Case submitted.*"

"Minutes, Thursday, May 4th, 1854."

In this case, the Court having duly considered the application made herein by the defendant for the removal of this cause to the United States Circuit Court sitting in the eastern district of La., and considering that said application is well founded in law, it is

ordered that said application be granted, and that the defendant have leave to remove this case as within prayed for to said Circuit Court, on his giving bond, with good and sufficient security, in the sum of five hundred dolls. that he will enter in said Circuit Court, on the first day of its next ensuing term, copies of the proceedings and process had herein.

STATE OF LOUISIANA,
Second District of New Orleans.

I hereby certify that the foregoing sixteen pages contain a full and complete transcript of all documents filed and of all the proceedings had in the suit in which Christian Honold is plaintiff and Lathrop L. Sturges is defendant.

In testimony whereof, I hereto set my hand and affix the seal of said Court, this fifth day of October, 1854, and [SEAL.] the 79th of the independence of the United States of America.

(Signed) A'DRE DERBES.

I, James N. Lea, sole judge of the Second District Court of New Orleans, do hereby certify that Alexander Derbes is a clerk of said Court, that the same is a court of record, having general jurisdiction, and that the signature Ad're Derbes to the foregoing certificate is in the proper hand writing of him, the said Alexander Derbes, clerk; to his official acts, as such, full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand and seal, at the city of New Orleans, on this 7th day of October, in the year of our Lord one [J. N. L.] thousand eight hundred and fifty-four.

J. N. LEA,
Judge.

Answer. Filed 13th Nov., 1854.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Eastern District of Louisiana.

CHRISTIAN HONOLD
vs.
LATHROP L. STURGESS.

And now, into this honorable Court, by his counsel, comes the the defendant, Lathrop L. Sturgess, a citizen of the State of New York, residing in the city of New York, and for answer to the petition of the plaintiff, Christian Honold, says, that he denies all and singular the allegations therein contained; and specially he denies the charges of fraud and fraudulent concealment laid against him

in said petition, and says, that in the matter and things stated in plaintiff's petition he acted in entire good faith and with fair dealing.

Wherefore he prays to be hence dismissed with costs.

(Signed) WOLFE & SINGLETON,
For Def't.

(Signed) DURANT & HORNOR,
Att'eys of Def'dts.

Minutes. April term, 1855.

New Orleans, Tuesday, 1st May, 1855. Court met pursuant to adjournment. Present, Hon. J. A. Campbell, presiding judge. Present, Hon. T. H. McCaleb, district judge.

C. HONOLD
vs.
L. L. STURGES. } No. 2393.

This cause came on to heard, and *were* argued by J. P. Benjamin for pl'ffs, and by Cha's Hornor and Thos. R. Wolfe, esq'rs, for defendants, and submitted to the Court, and taken under advisement.

Minutes. April term, A. D. 1855.

New Orleans, Thursday, 3d May, A. D. 1855. Court met pursuant to adjournment. Present, Hon. J. A. Campbell, presiding judge. Present, Hon. T. H. McCaleb, district judge.

CHRISTIAN HONOLD
vs.
L. L. STURGES. } No 2393.

This cause having been submitted on yesterday, the Court this day delivered and ordered to be filed a statement of the facts of the case, and directed an inquiry into certain matters before the clerk of this Court as commissioner.

Statements of facts, &c.

CHRISTIAN HONOLD
vs.
LATHROP L. STURGES. } No. 2383.

This cause was submitted to the Court upon the pleadings, documentary proof on file, depositions, and the oral examination of witnesses produced by both parties.

Thereupon the Court finds to be proven that the defendant was a part owner of the ship Ashland, and joined with the other owners in selling the same to the plaintiff at the time and for the price

stated in the petition and bill of sale executed by their agents, and on file as evidence.

2. That the negotiations for the sale were commenced near the middle of January, 1854, at New Orleans, between the plaintiff and the agents, for the defendant and other owners, and the sale was completed there, by the delivery of the vessel and payment of the price.

3. That the vessel was not in a condition to be *throughly* examined pending this negotiation, in consequence of the cargo aboard; and the defects hereafter mentioned were not apparent defects, but were concealed from observation by a ceiling *other* other coverings over the defective parts; and that the defects were not declared to nor known by the plaintiff at or before the sale; but he purchased the vessel supposing her to be of the class A, No. 1, at which he was informed by the agents of the defendant, and so ascertained by inquiry himself, she was rated at the insurance offices in New Orleans.

4. That the plaintiff was not informed of the nature and extent of the defects in the ship until the survey by Swain & Lovett, inspectors, which is filed in the cause as evidence, and which represents accurately the nature of the defects in the ship.

The the ship was so defective at the date of the sale as to be useless for the purpose for which she was purchased, and was not worth the cost of the necessary repairs, and that this condition was discovered the 20th March, 1854, after the survey and inspection was completed.

5. The Court further finds, that before the negotiations for the sale had commenced, the agents of the owners, including the defendant, had engaged a cargo for Havre, and that the lading of the ship was $\frac{3}{4}$ds completed when she was sold to the plaintiff; that the plaintiff undertook in the contract to complete this freight engagement, to pay all the charges and expenses of the vessel from the time her inward cargo had been removed, (26th December, 1853,) and also the outward expenses of the voyage, and that he was to receive the advantages therefrom, and to exonerate the defendant and others for liabilities therefor.

6. The Court further finds, that the lading was completed and the ship was ready for sea the 3d February, 1854, and sailed from New Orleans on that day; that on the 5th February she commenced leaking, and so continued till the 10th, when the officers and crew pronounced her to be unseaworthy, and discontinued their voyage to Havre.

7. The Court finds that the vessel returned and arrived in New Orleans the 16th February, 1854, and was subjected to examination within the month following, when it was ascertained that she was unseaworthy and useless, in the manner specified in the certificate of Swain & Lovett, on file in evidence.

The Court find that the entire costs and expenses of the vessel, from the purchase until she was ready for sea, in August, '54,

amount to the sum of twenty-eight thousand five hundred and thirty-six and $\frac{80}{100}$ dollars ($28,536$\frac{80}{100}$.)

The repairs made after her arrival in New Orleans, in February, amount to the sum of twenty-six thousand eight hundred and thirty-six and $\frac{67}{100}$ dollars ($26,836$\frac{67}{100}$.

The expenses of the vessel and cargo in New Orleans, from her arrival in February till her departure in August, amount to thirty-one thousand one hundred and ten and $\frac{73}{100}$, (including repairs,) ($31,110$\frac{73}{100}$) and the profits lost upon the voyage that failed in February amount to ———— (no evidence.)

The Court find the repairs of the vessel were completed about the first of August, 1854, and that she then took in her cargo and proceeded to Havre; that when her repairs were completed she was worth in the market the sum of thirty thousand dollars, $30,000.

The Court exonerates the defendant from the allegations of fraud, and find that he was ignorant of the defects in the vessel, and made no false representations in reference to her to the plaintiff.

It is the opinion of the Court, that the plaintiff is entitled to maintain this action, without having put the defendant in legal default.

And that he is entitled to recover the sum of six thousand eight hundred and seventy-five dollars, (6,875,) which it finds to be the difference between the actual value of the share of the defendant in the vessel at the sale and price paid, and which difference arose from the latent defects in the same.

Also the sum of one thousand two hundred and thirty-two 71-100 dollars, being five-sixteenths (5-16) part of the expenses of the vessel and cargo from the time the plaintiff became subject to them (26th December, 1853) to the time when the discovery of the nature and degree of the defects was made, (20th March, '54,) and from which expenses the plaintiff derived no profit.

The Court allows interest from the commencement of the suit and costs.

The Court disallow the claim for the profits of the voyage broken up by the discovery of the defects in the vessel. Also the claim for demurrage of the vessel while undergoing repairs, and the costs of these repairs. Also for indemnity from the claim of shippers on the vessel, no evidence of loss having been adduced.

(Signed) J. A. CAMPBELL,
Asso. Justice.

Final judgment.

CIRCUIT COURT OF THE UNITED STATES,
Fifth Circuit and Eastern District of Louisiana.

November Term, A. D. 1855.

New Orleans, Monday, 12th November, 1855. Court met pur-

suant to adjournment. Present, Hon. J. A. Campbell, presiding judge. Present, Hon. T. H. McCaleb, district judge.

CHRISTIAN HONOLD
vs. } No. 2393.
LATHROP L. STURGES.

This cause was argued at the last term upon the principles of law involved in the pleadings and evidence, and the Court, upon the proposal of the parties, referred to the clerk of the Court to report the facts of damage, costs, and expenses necessary to complete the case made up at that term of the Court.

And the Court adopts the conclusions reported by the clerk, and directs that the amounts he has ascertained be inserted in the case as a part of the same, and that judgment be entered for the plaintiff for the sum of eight thousand one hundred and seven dollars and seveny-one cents against the defendant, Lathrop L. Sturges, with interest thereon, at the rate of five per cent. per annum, from the 27th day of April, 1854, until paid, and for costs of suit.

Decree rendered 12th November, 1855.

Decree signed 16th November, 1855.

Signed J. A. CAMPBELL,
Asso. Just. S. C. U. S.

Petition for writ of error. Filed 21st Nov., 1855.

To the Circuit Court of the United States for the 5th circuit and eastern district of Louisiana:

LATHROP L. STURGES
vs. } In error.
CHRISTIAN HONOLD.

The petition of Lathrop L. Sturges, with respect, sheweth, that he is advised that there is error in the judgment rendered against him in this case on the 16th November, 1855, to his irreparable prejudice, &c., and that he is desirous of prosecuting a writ of error therefrom to the Supreme Court of the United States, to operate as a supersedeas.

Wherefore he prays that he be allowed a writ of error from the said judgment to the Supreme Court of the United States, to operate as a supersedeas, upon giving the bond, and good and sufficient security, required by law, and that the defendant in error be duly cited to answer this petition.

(Signed) WOLFE & SINGLETON,
DURANT & HORNOR,
For Petitioner.

Minutes. November Term, A. D. 1855.

New Orleans, Wednesday, 21st Nov., 1855. Court met pursu-

ant to adjournment. Present, Hon. Theo. H. McCaleb, District judge. Absent, Hon. J. A. Campbell, presiding judge.

CHRISTIAN HONOLD
vs. } 2393.
L. L. STURGES.

On motion of Durant and Hornor and of Wolfe and Singleton, esqrs., of counsel for the defendant, and upon filing the petition of said defendant, representing that he feels aggrieved by the judgment herein rendered against him on the 16th day of November instant, and praying for a writ of error therefrom, to operate as a supersedeas, it is ordered that the said writ be allowed as prayed for, returnable to the next term of the Supreme Court of the United States, on the said defendant giving bond, conditioned according to law, in the penal sum of thirteen thousand dollars, with J. O. Woodruff & Co. as surety thereon.

Bond for writ of error. Filed 21st Nov., 1855.

Circuit Court of the United States for the fifth circuit and eastern district court of Louisiana.

LATHROP L. STURGES
vs. } In error.
CHRISTIAN HONOLD.

Know all men by these presents, that we, Lathrop L. Sturges and John O. Woodruff & Co., are held and firmly bound unto the above named Christian Honold in the sum of thirteen thousand dollars, to be paid to the said Christian Honold, his executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by the presnts. Sealed with our seals, and dated this seventeenth day of November, 1855.

Whereas, the above named Lathrop L. Sturges hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the Circuit Court of the United States for the fifth circuit and eastern district of Louisiana:

Now, therefore, the condition of this obligation is such, that if the above-named Lathrop L. Sturges shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue. One word erased before signing, *before signing.*

(Signed) LATHROP L. STURGES, [SEAL.]
By his att'ys, DURANT & HORNOR, and
WOLFE & SINGLETON,
JNO. O. WOODRUFF & CO. [SEAL.]

Sealed and delivered in the presence of

UNITED STATES OF AMERICA.
Circuit Court of the United States,
Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, John W. Gurley, Clerk of the Circuit Court of the United States, for the fifth circuit and eastern district of Louisiana, do hereby certify, that the foregoing 20 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Christian Honold vs. Lathrop L. Sturges, No. 2393 of the docket, so far as the same now remain of record or on file in said Court.

Witness my hand and the seal of said Court, at the city of New [SEAL.] Orleans, this 7th day of January, A. D. 1856.

J. W. GURLEY,
Clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the Circuit Court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or one of you, between Christian Honold and Lathrop L. Sturges, a manifest error hath happened, to the great damage of the said Lathrop L. Sturges, as by his complaint appears: we being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 21st of November, in the year of our Lord one thousand eight hundred and fifty-five.

J. W. GURLEY,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

THE UNITED STATES OF AMERICA.

The President of the United States to Christian Honold, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the fifth circuit and eastern district of Louisiana, wherein Lathrop L. Sturges is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 21st day of November, in the year of our Lord one thousand eight hundred and fifty-five.

THEO. H. McCALEB,
U. S. Judge.

[Endorsed:] United States Circuit Court, No. 2363. Christian Honold vs. Lathrop L. Sturges. Citation in error.

Marshal's return.

Rec'd November 22d, 1855, and on the same day served copy of the within citation in error on Christian Honold in person in the city of New Orleans, and returned same day, November 22d, '55.

H. DUFILHO,
Dy. Marshal.

2582.

SUPREME COURT OF THE UNITED STATES.

No. 77.

JOSIAH WALTON, ADM'R OF PRISCILLA COTTON, AND AL., COMPL'TS AND PL'FFS IN ER.,

vs.

ALLEN COTTON, NOAH COTTON, AND WM. E. JONES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

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STATE OF TENNESSEE.

Be it remembered, that on the 4th day of December, 1854, a transcript of the record in the case of Cotton, adm., vs. Cotton & als., was filed in the office of the Supreme Court, in the words and figures following, to wit:

STATE OF TENNESSEE,
April term of the Chancery Court for the district of Sumner county, in said State.

Be it remembered, that this being the day appointed by law for holding this Court, Chancellor Ridley appeared in the court house, ordered the sheriff to open Court, and proceeded to the despatch of public business, when the following orders and decrees were made, viz:

COTTON'S ADM'R et als. vs. COTTON et als., } D 878. O bill, filed April 6th, 1852.

and

THOMAS STALKER, guardian, et als., vs. ALLEN COTTON and others. } D 883. Injunction and attachment, filed May 27th, 1852.

To the Hon. B. L. Ridley, chancellor, sitting at Gallatin:

The bill of complaint of Josiah Walton, adm'r of Priscilla Cotton; James Cryor, executor of Polly Foxall; Henry F. Cotton, ex'tr of John Cotton; Jesse Cotton, adm'r of Arthur Cotton; L. B. Edwards, guardian of the minor children of Moor Cotton; John Thomas Cotton, Persilla, & husband; Edwards, Anne M. Payne, by next friend, Thomas Cotton, vs. Noah Cotton, Allen Cotton, and Wm. E. Jones.

Your compl't, citizens of Sumner county, would shew your honor, that Polly Foxall, John Cotton, Arthur Cotton, and Noah Cotton, and Allen Cotton, are children of Percilla Cotton and her husband, Thomas Cotton, who was a captain in the revolutionary war; that after the death of the said Thomas Cotton, his widow, Percilla Cotton, filed her declaration for a pension, in consequence of the revolutionary services of her husband. Josiah Walton, esq., attended to this application on the part of the said Percilla; that she died before the department placed her on the pension roll. Josiah Walton administered upon the estate, in the county of Sumner, where she died, and renewed the application, and at great trouble

and expense; the pension department allowed about the one-half of the claim, not giving the pension for the full time that he served, and what money the said administrator drew, after retaining what was agreed on for his services, and the services of counsel, the same was paid over in equal shares to all the children of the said Percilla Cotton, and the representatives of the children who are dead. The children mentioned in the caption of this bill are the only children of Thomas & Percilla Cotton living at the death of the said Percilla Cotton; and the parties above set forth are the representatives of those who have died since her death. Moore Cotton, Sally Strother, and Tabitha Ore are likewise children of the said Percilla & Thomas, but who departed this life before her death. L. B. Edwards and Wm. Cantrell are the executors of Moore Cotton. No one has administered on the estate of Sally Strother and Tabitha Ore. If they shall be entitled to any portion of said pension fund, compl't asks that an administrator be appointed and be made compl't in this bill; likewise said executors of Moore Cotton.

The compl'ts would further shew your honor, that, although Josiah Walton administered on the estate of Percilla Cotton, in Sumner county, where she died—the only county authorized to grant administration—yet the said Wm. E. Jones, who is engaged in hunting up pension claims, and the said Allen Cotton, who resides in Davidson county, with a view of getting the business and money in their hands, applied to the County Court of Davidson, and suppressed from said Court the facts of there being an administration of said estate, in the county of Sumner, and thus procured the County Court of Davidson to appoint the said Allen Cotton administrator, and in all which they induced the said Noah Cotton to aid, assist, and unite with them—all done with a view of depriving the compl'ts and the balance of the children of their portion of said pension fund. Upon administration being granted as aforesaid, the said Jones, and Allen Cotton, and Noah Cotton renewed the application for the extension of said pension, covering the whole time; and after the proof had been obtained by said Walton and Adam Ferguson, who the administrator employed to hunt up the proof, and who, at great trouble and expense, examined and searched the records of the various States, and ascertained the full time that Captain Cotton served in the revolutionary war, the s'd administrator, Walton, was then prosecuting s'd claim, and was expecting to draw it, as he had done the first allowance, when the said Jones, with the powers of attorney of the said Allen Cotton and Noah Cotton, drew an additional pension, as the administrator of Percilla Cotton, amounting to $3,500 in cash. And they, the said Wm. E. Jones, Allen Cotton, and Noah Cotton, retain in their hands the whole $3,500, and fail and refuse to account with compl'ts, and pay over to them three-fifths of said fund, which they are entitled to, if the children who deceased

before the death of their mother is not entitled. If they are entitled, these compl'ts are entitled to three-eighths of said $3,500.

To the end that justice be done in the premises, the compl't prays that the said Allen Cotton and Wm. E. Jones, of Davidson county, and Noah Cotton, of Sumner county, be made defd'ts to this bill; let them answer the various allegations in this bill contained; and by decree of this hon. Court, the said defd'ts be compelled to pay over to them their portions of the said $3,500, with interest from the time they received it, which time they are called on to state, and give to the compl'ts such other and different relief as the nature of the case may require and your honor shall seem meet; compl'ts pray for process to issue to Davidson and Sumner.

JO. C. GUILD,
Sol.

I acknowledge myself the compl'ts security to the defd'ts in the penal sum of two hundred and fifty dollars, conditioned for the prosecution of the foregoing bill with effect, and the payment of all costs.

Witness my hand and seal, this 6th April, 1852.

JO. C. GUILD, [SEAL.]

State of Tennessee, to the sheriff of Sumner county, greeting:

We command you to summon Noah Cotton, if to be found within your county, to appear before the chancellor of the fourth division, at the next Chancery Court, to be held for the chancery district, at the court house, in Gallatin, on the second Monday in October next, then and there to answer a bill in equity exhibited in said Court by Henry F. Cotton, adm'r, et als., complainants, against the said Noah Cotton et als., defendants, and further to do and receive what our said Court shall then and there consider. Herein let him fail not, under the penalty inflicted by law, and have then there this writ.

Witness W. M. Blackmore, clerk and master of our said Court, at office, the second Monday in April, in the year 1852, and 76 year of American independence.

W. M. BLACKMORE.

Issued April 21st, 1852. Came to hand, April 22d, 1852. Returned executed, summoning and delivering a copy of the bill to Noah Cotton, April the 24th, 1852.

G. LOVE,
D. S.

Counterpart issued to sh'ff Davidson county, April 22d, 1852. Returned endorsed, "Came to hand the 24th of April, 1852, and

executed on Allen Cotton, and delivered a copy bill to him the 30th of April, 1852." "Executed on Wm. E. Jones, and delivered a copy bill to him also the 11th of June, 1852."

R. W. BARNES, *D. S.*

To the Hon. B. L. Ridley, chancellor, sitting at Gallatin:

The bill of complaint of Thomas C. Stalker, guardian of Edward R. Cryer and Priscilla R. J. Cryer; and Robert M. Boyers, next friend of Martha Ann, Betsey Claiborne, and Mary Cage Cryer—all children of H. M. Cryer,[1] (son of Mary Foxall, deceased)—and Joseph A. Anthony and his wife, Elizabeth Elenora; and C. W. Bridgewater, administrator of Thomas C. Cryer, dec'd; and Emily C. Cryer, Hardy M. Cryer, and Chesley B. Cryer, the three latter the widow and children of Thomas C. Cryer, dec'd, and Emily C. Cryer, against James W. Cryer, executor of Mary Foxall; Henry Cotton, ex'r of John Cotton; Jesse Cotton, adm'r of Arthur Cotton, Noah Cotton, Allen Cotton, and Wm. E. Jones.

Humbly complaining, your orators and oratrixes—Thomas Stalker, guardian of Ed. R. Cryer, Priscilla R. J. Cryer; Robert M. Boyers, next friend of Martha Anne, Betsey Claiborne, and Mary Cage Cryer—all chidren of Hardy M. Cryer, (son of Mary Foxall, deceased)—and Joseph A. Anthony and his wife, Elizabeth Elenora; and C. W. Bridgewater, adm'r of Thomas C. Cryer, dec'd; and Emily C. Cryer, Hardy M. Cryer, and Chesley B. Cryer, the three latter the widow and children of Thomas C.—would respectfully show unto your honor, that they are all citizens of Sumner and Smith counties, except Martha Cryer, who resides in Kentucky. They would further show, that Mary Foxall, deceased, was one of seven heirs of Precilla Cotton, widow of Thomas Cotton, deceased. *The* would further show, that Hardy M. Cryer was the only child and heir of the said Mary Foxall. They would further show, that Hardy M. Cryer died leaving the following children heirs, viz: James W. Cryer, Thomas C., Priscilla R. J., Martha Anne, Betsey Claiborne, Edward R., and Mary Cage Cryer. Thomas C. is now dead, leaving Emily C., his widow, and two children, viz: Hardy M. Cryer, and Chesley B. Cryer. C. W. Bridgewater administered upon the estate of the said Thomas C. They (the compl'ts) would further show, that James Cryer, executor of Mary Foxall; Henry F. Cotton, ex'r of John Cotton; and Jesse Cotton, adm'r of Arthur Cotton, filed an original bill in your honorable Court, sitting at Gallatin, against Noah Cotton, Allen Cotton, and Wm. E. Jones. This original bill is adopted by complainants, and made part of this bill. In this original bill it is alleged, and compl'ts so believe, that Noah Cotton and Allen procured Wm. E. Jones to prosecute the pension claim of Priscilla Cotton, deceased, and that the three obtained a pension amounting to about $3,500. Compl'ts contend that the heirs of Hardy M. Cryer, deceased, are justly entitled to the one-

seventh part of this pension, whatever the amount may be, with interest on the same since it was received by the said Noah, Allen, and Wm. E. Compl'ts would further show, that James W. Cryer is insolvent, and executions against him have been returned nulla bona, and that he is now indebted to the children of Hardy M. Cryer, deceased, the amount of decree in the Sumner chancery, which now amounts to about $. They would further show, that Thomas C. Cryer was the regular qualified executor of Mary Foxall, and that before his death he had settled all or nearly all the business of said estate. They would further show, that he was responsible and gave good security. They believe the said James has never given any security; they cannot find on the record where he has given security, or has been sworn in as executor; he was appointed so by the will, and this is his only authority, as compl'ts believe, for his acting as executor. If he, however, has given security, they pray that these securities shall be made known by the said James, and that they shall be made parties to this suit.

The premises considered, compl'ts are without remedy, save in a court of equity. They therefore pray that Noah Cotton and Henry F. Cotton, executor of John Cotton, who reside in Sumner county, and Allen Cotton and Wm. Jones, who reside in Davidson county, and Jesse Cotton, who resides in Simpson county, Kentucky, all be made defendants to this bill. Let copies and subpœnas issue—let publication be made as to the non-resident—let them answer all the allegations and statements in this bill on oath. They pray that James Cryer, if he has any securities, when made known, that they be made parties. They pray that this bill be consolidated with the original bill referred to, and that both be heard together. They pray for writs of injunction and attachment in this case, this being the first application for the same. They pray that said Noah Cotton, Allen Cotton, and Wm. E. Jones be all enjoined from paying the one-seventh part of what they have received, say $600, to James Cryer, or any one else; they pray that the entire interest of the said James in said pension be attached to satisfy the amount of the decree which he is now owing the other heirs of his father, and which can be seen by reference to the decree in the case of Thomas Stalker and others against James M. Cryer and others, which was rendered in the year 1851, as compl'ts believe. Upon the final hearing, the compl'ts pray for a decree in favor of each compl't who is an heir of Mary Foxall for whatever sum is justly due them relative to said pension and debt of James W. Cryer. They pray further, that if the said Noah and Allen made any illegal contract with the said Jones to procure said pension, that the same shall be set aside so far as the rights of compl'ts are concerned, as they were no parties to the same. They pray for such other and further relief as the nature of their case requires,

and which to your honor shall seem meet and as in duty bound, they will ever pray, &c.

BARRY & HUMPHRERYS,
Sol's for Compl'ts.

Came Robert M. Boyers before me, and made oath that the matters and things stated in the foregoing bill as of his own knowledge are true ; and those things stated as information of others he believes to be true.

R. M. BOYERS.

Sworn to before me, May 22d, 1852.

W. M. BLACKMORE, *C. & M.*
Per N. D. SMITH, *Deputy.*

To the clerk and master of the Chancery Court at Gallatin :

Upon compl'ts entering into bond with sufficient security in the sum of twelve hundred dollars, conditioned in pursuance of law, issue writs of injunction and attachment as prayed for in the bill. Issue all process prayed for. May 24th, '52.

W. K. TURNER, *Judge.*

Know all men by these presents, that we, Thomas C. Stalker, guardian, &c., Robert M. Boyers, next friend, &c., Joseph A. Anthony and C. W. Bridgewater, adm's of C. Cryer, and Garland C. Crenshaw, are held and firmly bound unto James W. Cryer, Henry Cotton, Jesse Cotton, Noah Cotton, Allen Cotton, and William E. Jones, in the sum of twelve hundred dollars, which payment, well and truly to be made, we bind ourselves, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 27th day of May, A. D. 1852.

The condition of the above obligation is such, that whereas the above bound Stalker, guardian, Boyers, next friend, Bridgewater, admr., and Anthony and wife, hath this day obtained from the Court of Chancery, holden at Gallatin, in the State of Tennessee, a writ of injunction and attachment, enjoining the said Noah Cotton, Allen Cotton, and William E. Jones from paying over any portion of sum of money (supposed $600) to the said J. W. Cryer, and attach the interest of said James W. in said fund, as set out in their bill this day filed : Now, if the said Stalker, Boyers, Anthony and wife, and Bridgewater, shall prosecute said injunction and attachment with effect, or in case the same shall be dissolved and discharged, he will pay to the said defendants, Cryer, Henry Cotton, Jessie Cotton, Noah Cotton, Allen Cotton, and William E. Jones, or either of them, all such costs and damages as may be recovered against them in any suit or suits hereafter to be brought for the wrongful sueing out said injunction and attachment writ, and shall, moreover, prosecute his said bill with effect ; or on failure

therein, shall pay all such cost as may be adjudged by the court upon a final hearing of said cause, and pay such cost as may be decreed upon the final hearing, then the above obligation to be void, otherwise to remain in full force and effect.

G. C. CRENSHAW, [SEAL.]

State of Tennessee to Noah Cotton, Allen Cotton, and Wm. E. Jones, their agents, attorneys, &c., and to the sheriff of Sumner county, greeting.

Whereas it is represented to the Hon. Wm. K. Turner, esq., judge, &c., in and for the State of Tennessee, on behalf of Thomas Stalker, guardian of Edward R. and Priscilla R. J. Cryer, and of R. M. Boyers, next friend of Martha Ann, Elizabeth C. and Mary Cage Cryer, and Joseph A. Anthony and wife, Elizabeth Elenora, and C. W. Bridgewater, admr. of Thomas C. Cryer, deceased, and of Emily C. Cryer, Hardy M. Cryer, and Chesley B. Cryer, that they are aggrieved and will be greatly injured by you or either of you paying over to James W. Cryer, exr. of Mary Foxall, deceased, or to any one else, the seventh part (say $600) of a sum received by you as a pension from U. S. Government to Percilla Cotton, deceased, for the military services of her deceased husband, Capt. Thomas Cotton, in the Revolutionary war; and they, the complainants, having obtained and complied with the fiat of the judge aforesaid; to the end that you be enjoined from paying over the same, and that an attachment issue commanding the sheriff to attach the entire interest of the said James W. Cryer in the said pension fund, we, therefore, command you, and every of the persons above named, to desist from all further proceeding to pay to the said James W. Cryer, or to any one else, the one-seventh part of said pension fund of $3,500 so received by you. And you, the sheriff aforesaid, are hereby commanded to attach, in the hands of the said Noah Cotton, Allen Cotton, and Wm. E. Jones, the entire interest of the said James W. Cryer in the sum aforesaid, received by them as aforesaid, until the matters and things set forth in the bill of complaint of the said Thomas Stalker, guardian, and others, vs. the said James W. Cryer and others, shall be heard in our Chancery Court to be holden in the county of Sumner, at the court-house in Gallatin, on the second Monday in October next; and you, the sheriff aforesaid, will have then there this writ, and how you have executed the same; herein fail not. Witness W. M. Blackmore, clerk and master of our said Court, at office in Gallatin, this second Monday in April, 1852, and 75 year of American Independence.

W. M. BLACKMORE.

"Issued May 29, 1852. Came to hand May 29, 1852, and executed on Noah Cotton, by making known to him the contents of

this writ; also attached in his hands the interest of James W. Cryer in the fund mentioned."

G. LOVE,
D. Sh'ff.

"Counterpart issued same day to sheriff of Davidson county; returned endorsed, come to hand and executed on Allen Cotton, by making known the things herein contained, 1st June, 1852. Executed on Wm. E. Jones by making known the things herein contained, June 11th, 1852.

L. W. TIZZELL, *Sh'ff.*

State of Tennessee, to the sheriff of Sumner county, greeting:

We command you to summons Noah Cotton, Henry F. Cotton, ex'r of John Cotton, and James W. Cryer, if to be found within your county, to appear before the chancellor of the fourth division, at the next chancery Court to be held for the chancery district, at the Court house in Gallatin, on the second Monday in October next, then and there to answer a bill in equity exhibited in said Court by Thomas Stalker, guardian, and others, complainants, against the said Cotton and others, defendants, and further to do and receive what our said Court shall then there consider; herein let them fail not, under the penalty inflicted by law, and have then there this writ. Witness, W. M. Blackmore, clerk and master of our said Court, at office, the second Monday in April, in the year 1852, and 76th year of American independence.

W. M. BLACKMORE,
Per N. D. SMITH,
Deputy.

"Issued May 29, 1852; came to hand in due time, and executed in full, and a copy left with James W. Cryer, July 14th, 1852."

G. LOVE, *D. S*

Spa. iss'd same day to sh'ff of Davidson county; returned endorsed, "come to hand and executed on, and a copy of bill delivered to Allen Cotton 1st June, 1852; executed on Wm. E. Jones, and a copy bill delivered June 11th, 1852."

Publication made as to Jesse Cotton, August rules, 1852.

The joint and seperate answer of Noah Cotton and Allen Cotton to the bill of complaint of James Cryer, executor of Polly Foxall, Henry F. Cotton, executor of John Cotton and Jesse Cotton, administrator of Arthur Cotton, filed against them in the chancery Court at Gallatin:

The respondents, saving all just exceptions to said bill, for answer thereto, or so much thereof as they are advised it is material for

them to answer unto, say: They admit that they, together with Polly Foxall, John Cotton, Arthur Cotton, and Noah Cotton, are the children of Priscilla Cotton, wife of Thomas Cotton. That Priscilla Cotton filed her declaration for a pension in consequence of the revolutionary services of Thomas Cotton; that Josiah Walton, esq., attended to this application; that she died before the department placed her name on the pension roll; Josiah Walton administered upon her estate in Sumner county, where she died, and renewed the application to the department, and had a part of the claim allowed. That Walton, after paying attorneys' fees, and retaining his own fees, paid the balance of the pension so recovered to those entitled in equal shares. They admit that the children mentioned in the caption of the bill are all the children of the said Priscilla living at the time of her death; and that James Cryer, Henry F. Cotton, and Jesse Cotton, are the representatives of Polly Foxall, John Cotton, and Arthur Cotton, who have died since the said Priscilla, and after they had received their portion of the pension so recovered by the said Walton. They admit that Moore Cotton, Sally Strother, and Tabitha Ore, were also children of Priscilla Cotton and Thomas Cotton, but who departed this life before the death of Priscilla. That L. B. Edwards and William Cantrell are the executors of Moore Cotton; that no one has to their knowledge administered on the estate of Sally and Tabitha. Respondent Allen admits that he resides in Davidson county, and that he administered upon the estate of Priscilla Cotton, in said county, but he denies the imposition charged upon as to the said Davidson county Court, or any other charge made against him of improper conduct, and respondent doth deny any imposition upon the county Court of Davidson county. Respondents will here state and shew their entire proceedings and connection with the recovery of the claim for pension prosecuted by them on account of the services of their father in the revolutionary war, and which became due to their mother, Priscilla Cotton, as far as the following statements may agree with the charges of the bill that they be taken as admissions, and so far as they differ with the bill, that they be taken as explanatory or denials of the charges as they may apply to the same. First, they state that Priscilla Cotton, in her lifetime, presented her application to the proper department for the allowance of the pension; that she, succeeding in establishing the claim to the extent that she and those employed by her supposed her entitled to, *that* a certificate of said pension issued in the name of the said Priscilla for the same; but whether it issued before or after her death respondents are not fully satisfied; but be this as it may, the certificate was not received by the said Priscilla in her lifetime. That after her death, Josiah Walton administered upon her estate, and by virtue of his administration obtained the certificate, and consequently the pension. Upon the receipt of this pension by the said Walton, and the distribution between those entitled which were the

living children of Priscilla Cotton, and such others as he supposed himself properly authorized to pay to, the connection of said Walton, as administrator of Priscilla, and the department of the government, ceased, and the said Walton and others then interested, as respondents believe, supposed they had no further claim upon the government. Some time after this, their co-defendant, Jones, informed respondent Allen that there was still due to the survivors or heirs of the said Priscilla a considerable sum of money, and that the same could be realized; that this information astonished them, as they supposed that their former agent had recovered all that was due. Respondent therefore employed their co-defendant, Jones, together with his partner, Wm. H. Smith, to prosecute the claim for the balance of the pension, and for this purpose respondent Allen, living in Davidson county, not supposing that it made any difference as to which county the administration was granted in—whether in the county of the last residence or not—made application to the county Court of Davidson county for letters of administration upon her estate for the purpose of prosecuting the claim, and no concealment or representation that no administration had been granted was made by them with the view of getting into their hands any funds belonging to the estate improperly; but they had been told of the claim, and for the purpose of recovering the claim, procured the letters. They obtained letters therefore in Davidson county simply because it was convenient to respondent Allen, who intended to attend to the prosecution of the claim; they knew that letters had been granted to Josiah Walton, in Sumner county, when they made the application; but it was for the reasons they have stated, and not those attributed to them by complainants, that they did apply to Davidson county. Respondents prosecuted their claim through their attorneys, Smith & Jones, successfully, and received from the department the sum of thirty-five hundred and forty-four dollars and forty-nine cents, which said sum they divided equally between them—they having paid their said attorneys the fees agreed to be paid them for their services, trouble, and expenses in the prosecution of said claim, which was equal to about forty per cent. on the whole amount of said claim so realized.

Respondents, further answering, say, that as to the charge that Josiah Walton was at the time that they filed their application prosecuting the claim for the increase of the pension, and that his attorney had searched the records of the different States, and ascertained the full time, &c., they deny, and state that they are informed and believe the information true, that neither Walton nor his attorney knew of the existence of the claim, nor of the means of proving the claim to the extension or increase of the pension, until the attorney of Walton was informed of the fact by their attorney, Jones, and not until after Smith and Jones had made the proof. And they are informed by their said attorney, Jones, that he made this communication to Mr. A. Ferguson, who expressed his aston-

ishment that there was anything more due, saying that he thought he had got it all.

That their attorney, Jones, told him that he was then prosecuting the claim for the balance of the sum, and had made the proof; and that not until this disclosure was made to the attorney, Ferguson, did he make any attempt to recover the balance; but that after these facts were made known to him, and not till then, did he or Walton or any of comp'lts conceive the idea of any further prosecution upon this point. But after Ferguson was by this means placed in the possession of the states and condition of the claim, he conceived the idea of the interference to which this bill is the sequel; and that if he, the said Ferguson, ever took any proof, and went into different States to search records, it was not until after the occurrences above stated, all of which might have been avoided by a reference to the Pension Office, in Washington city. Respondents are also informed and believe, that the said complainants, through their said attorney, Ferguson, finding that the proof had been made, and that the claim would upon this proof be allowed, went before the department, and presented and pressed before the department the claim of said Josiah Walton, as the first or only legal and true representative of the said Priscilla; that the administration granted to the respondent, Allen, by the Davidson county Court, was void, and that the department should not pay it over to the attorneys of respondents. That these questions were all brought before the Commissioner of Pensions, and by him, with all the facts and law of the case, with the argument of the complainants' attorney before him, declared that the application of respondents was a legal application, and that they were entitled to the certificate of pension. These facts being so, the statement of the complainants are at variance with not only those facts but the further fact, that from the time the first pension was allowed up to the application made by respondents, was a period of about six years. Now if the compl'ts or their attorney knew of the right of Priscilla to this amount, it is strange that they should have delayed to claim so long, and by which the means of proof might have passed away entirely. So, respondents repeat, they believe the statements made in the bill upon this point to be untrue.

Respondents, further answering, state, that subsequent to the recovery of the first pension, and after the death of Priscilla Cotton, and before the application by respondents for the increase or extension of the pension, those of the children who were living at the death of the said Priscilla also died, to wit, John and Arthur Cotton and Polly Foxall; so that at the time the application was made for this pension, and at the time it was recovered, there were only respondents then living of the said children of said Priscilla. But the said Polly Foxall, John and Arthur Cotton left heirs at law, &c. Respondents now show to your honor, that they are informed and believe that there was presented by the complainants

the claim of these said last heirs to the said department, grandchildren of the said Priscilla, to a portion of said pension, and that it was insisted that the certificate of pension should issue to them as well as to respondents. This question was also discussed before the department; and with a full knowledge of these facts, and the argument of the attorney for the complainants, the department decided that respondents alone, being the only living children of the said Priscilla, were entitled to the pension, and that the grandchildren were not entitled to any portion of the same. And thereupon the pension certificate was issued to respondents, (a copy of which will be produced upon the hearing of the cause if necessary,) and upon which they have received the money aforesaid.

For greater certainty upon all these points, respondents refer to the certified copy of transcript from the files of the Pension Office herewith filed, marked "A" and "B," and prayed to be taken as a part of this answer. Now, respondents are advised that they, under the acts of Congress, are and were, at the time of the application herein, alone entitled to said pension; that the grandchildren represented by complainants are not entitled to any portion of the same. That it is not material whether the grant of letters of administration by the County Court of Davidson county for the purpose of general or special administration was valid or not. That this question belonged alone to the pension department, and is for the protection of the department, and is no ground of relief for the complainants. That the pension department is the proper tribunal to determine the question of who is entitled to the pension, and that its adjudication must stand until it is reversed by the proper tribunal. The Chancery Court of Tennessee has no such power. That the pension department having decided that respondents alone are entitled to the pension, and having paid the money over to them—though this may have been improperly done by the department—yet complainants have no right to set up in this event any claim to the same; for if the department has paid the money or made the allowance of pension to improper persons, this does not prevent the persons actually entitled to recover from the department, notwithstanding they may have paid out the amount to others; but they are advised that this payment so made to them was legally and properly made, and that therefore complainants have no right to the same. Respondents having fully answered all the material allegations in said bill, hereby again denying all the allegations not herein denied, admitted, or avoided, denying all fraud and combination, &c., say that they are advised that this bill is multifarious, that there is no equity upon the face of the bill, and that this Court has no jurisdiction of the cause; and further and other reasons appearing upon the face of the bill, they demur to the same, and will rely upon the same at the hearing as though specially pleaded. Respondents pray the injunction discharged, the bill dismissed, and they hence dismissed, &c.; and as in duty bound, &c.

JOHN S. BRIEN, *Sol. for Respdts.*

STATE OF TENNESSEE, *Davidson County.*

This day personally appeared Allen Cotton before me, a justice of the peace in and for said county, and made oath in due form of law that the matters and things stated in the foregoing answer as of his own knowledge are true, and those stated upon information he believes to be true.

ALLEN COTTON.

Sworn and subscribed before me this 2nd day of August, 1852.

J. H. McEWEN,
J. P.

STATE OF TENNESSEE, *Sumner County.*

This day personally appeared Noah Cotton before me, a justice of the peace in and for said county, and made oath in due form of law that the matter and things stated in the foregoing answer as of his own knowledge are true, and those stated upon information he believes to be true.

NOAH COTTON. [SEAL.]

Sworn to and subscribed before me this 10th day of August, 1852.

J. W. HARRIS,
J. P.

Answer to Stalker's bill. Filed August 17, 1852.

The joint and separate answer of Sarah and Allen Cotton to the bill of complaint of Thomas C. Stalker, guardian, &c., et als. against them et als., in the Chancery Court at Gallatin:

These respondents, saving the usual exceptions to said bill, for answer to so much and such parts of the same as they are advised it is material for them to make answer unto, say, that of the matters and things stated in said bill, except those stated in reference to the prosecution and recovery of said pension, they know nothing of their own knowledge; and that for answer of this part of said bill, they refer to and adopt their said answer to the bill of James Cryer, executor, &c., filed against them and others in the honorable court, and rely upon all the defences made by them in said answer as a full defence to this bill.

Having fully answered, they pray to be hence dismissed with their reasonable cost, &c.

JOHN S. BRIEN,
Atto.

STATE OF TENNESSEE.

This day Noah Cotton and Allen Cotton personally appeared

before me, an acting justice of the peace for said county, and made oath in due form of law that the facts stated in the foregoing answer as of their own knowledge are true, and those stated upon information they believe to be true.

ALLEN COTTON, [SEAL.]
NOAH COTTON. [SEAL.]

This 10th day of August, 1852.

J. W. HARRIS,
J. P.

Compl'ts, for replication to defendants' answers, say the same are untrue, uncertain, and insufficient in law to bar them of the relief asked for in their bill, and that their bill is true, certain, and sufficient, and this they are ready to maintain according to the rules of court. Nov. 12th, 1852.

BARRY,
Solicitor for Complts.

Answer of Jones to O bill. Filed Angust 17th, 1852.

The answer of William E. Jones to the bill of complaint of James Cryer, executor, &c., of Polly Foxall, Henry F. Cotton, executor of John Cotton, Jesse Cotton, administrator of Arthur Cotton, filed against Noah Cotton, Allen Cotton, and respondent in the Chancery Court at Gallatin:

This respondent, saving all just exceptions to said bill, for answer to so much or such parts of the same as he is advised it is material for him to make answer unto, says that he has not had nor has he any interest in the subject matter in dispute. That his only connection with the case in any way was that respondent and his co-partner, W. H. Smith, were employed by his co-respondents to prosecute the claim before the department. That they did prosecute the claim, and succeeded by a great deal of trouble and very heavy expense in procuring the extension of the services upon which the pension was allowed. That they, by virtue of a power of attorney from his co-defendants, received the pension certificates and delivered to the defdts, and thereupon was paid by them their fees for the services, trouble, and expenses incurred. That this ended their connection with the claim.

Respondent states, that so far as the facts are stated by his co-defendants, in which reference is made to him or to the facts of the discovery and prosecution of the claim before, and the action of the department upon them, he believes to be true, and so far adopts the answer of his co-defendants upon these points.

Respondent is advised that the compl'ts have no ground of action whatever against him disclosed in the bill; that he has no interest in the suit, and is not a proper party; and that the court has no jurisdiction of the same. For these and other causes he demurs to

the bill, and will insist upon the same on the hearing as if he had specially demurred or pleaded the same.

Having fully answered, deny all fraud or combination, &c., prays to be hence dismissed, and as in duty bound,

JOHN S. BRIEN,
Atto.

STATE OF TENNESSEE, *Davidson County.*

This day William E. Jones personally appeared before me, Joseph H. McEwen, an acting justice of the peace for said county, and made oath in due form of law that the above answer is true to the best of his knowledge and belief.

WM. E. JONES.

Sworn to and subscribed this 2nd day of August, 1852.

J. H. McEWEN,
J. P.

The separate answer of William E. Jones to the bill of complaint of Thomas C. Stalker, guardian, &c., et als., filed against James W. Cryer, executor, &c., et als., filed in the Chancery Court at Gallatin:

This respondent, saving the exceptions to compl'ts bill, for answer, &c., to such parts of said bill as he is advised it is material for him to make answer unto, says, as to all the matters and things charged in said bill, except such as refer to the prosecution and recovery of said claim of Priscilla Cotton's children of the pension due her, he knows nothing; and for answer to that part of said bill, he refers to and adopts his answer to the bill of complaint of Jas. Cryer, executor, &c., et als., vs. himself and others in this honorable court as a full answer to this bill. Having fully answered, &c., prays to be hence dismissed, &c.

JOHN S. BRIEN,
Atto. for Dfdt.

STATE OF TENNESSEE, *Davidson County.*

This day William E. Jones personally appeared before me, J. H. McEwen, an acting justice of the peace for said county, and made oath in due form of law that the facts stated in the foregoing answer are true to the best of his knowledge and belief. This 2nd day of August, 1852.

WM. E. JONES.

J. H. McEWEN,
J. P.

The answer of James W. Cryer, executor of Polly Foxall, dece'd, to the bill of Thomas Stalker, et als.:

It is true that he in conjunction with others filed a bill vs. the said Noah Cotton and Allen Cotton and Jones, for the purpose of recovering their portion of the pension of upwards of $3500 that they received, coming to the heirs of Priscilla Cotton. It is true that the compl'ts recovered a decree against him for $——. The compl'ts do not state the amount; the Chancery Court records will show. It is true that he is poor and unable to pay it. As to his individual interest in this pension sued for, after taking out dfdts. portion of the expenses, he transferred the same to Vines L. Collier, jr., in January, 1852, before the filing of this bill. This was to secure said Vines L. Collier in advances of money, which dfdt. applied to the benefit of those children of his father living with dfdt.

It is true that he did not give security himself, as executor of Polly Foxall. He believes that his co-executor, Thomas C. Cryer, did. All that dfdt. desires is, that the pension shall be received, and, after paying expenses, that each of the heirs of Polly Foxall to receive their respective portions. He never wished or intended anything else; and as to the filing of complts. bill, there was no necessity or grounds for it; and having fully answered he prays to be hence dismissed.

JO. C. GUILD.

Came James W. Cryer before me, the clerk, and made oath that the above answer is true.

J. W. CRYER.

Sworn to before me this 12th Jan'y, 1853.

W. M. BLACKMORE, *C. & M.*

Exhibit A., in answer of Allen and Noah Cotton.

STATE OF TENNESSEE, *Sumner County.*

Know all men by these presents that I, H. F. Cotton, executor of John Cotton, deceased, one of the children and heirs of Priscilla Cotton, deceased, do hereby ratify and confirm the appointment of Allen Cotton, as administrator of the said Priscilla Cotton, deceased, as well as his lawful acts in the matter of the claim for increase of pension now pending—hereby authorizing and requesting the Commissioner of Pensions to make said increase payable to the said Allen Cotton, as administrator, for the benefit of the heirs of said Priscilla, and confirming the appointment of Smith and Jones, of Nashville, Tennessee, as attorneys to prosecute said claim and receive the certificate of pension. Witness my hand and seal this 16 day of July, 1851.

H. F. COTTON, [SEAL.]
Exr. of John Cotton, dec'd.

Signed, sealed, acknowledged and delivered in presence of—
NOAH COTTON,
CULLEN EDWERDS.

STATE OF TENNESSEE,
Sumner county.

Personally appeared before me, Wm. Solomon, an acting justice of the peace, in and for the county of Sumner and State aforesaid, H. F. Cotton, with whom I am acquainted, who acknowledged that he executed the above power of attorney on the day it bears date, and for the purposes therein mentioned.

Witness my hand and seal this 16th July, 1851.

WM. SOLOMON,
J. P.

STATE OF TENNESSEE,
Sumner county.

I, John L. Bugg, clerk of the county Court of Sumner county, certify that William Solomon, whose name is attached to the within power of attorney, is and was at the time of signing the same an acting justice of the peace of the said county of Sumner, duly elected, commissioned, and qualified as such, and his said signature is genuine.

Given under my hand and seal of office, at office, in Gallatin, [L. S.] this 16th day of July, 1851.

JOHN L. BUGG,
Clk.
By H. W. BUGG,
D. C.

STATE OF KENTUCKY,
Simpson county.

Know all men by these presents, that I, Jesse H. Cotton, of Simpson county, Kentucky, administrator of Arthur Cotton, dec'd, one of the children of Priscilla Cotton, dec'd, do hereby ratify and confirm the appointment of Allen Cotton as administrator of the said Priscilla Cotton, dec'd, as well as all his lawful acts in the matter of the claim of the heirs of the said Priscilla Cotton, dec'd, for increase of pension, hereby ratifying and confirming the appointment of Smith and Jones, of Nashville, Tennessee, as attorneys to prosecute said claim, and receive the certificate of pension.

Witness my hand and seal, this 17th day of July, 1851.

J. H. COTTON, [SEAL.]
Administrator of Arthur Cotton, dec'd.

Signed, sealed, acknowledged, and delivered in presence of—
W. C. MONTAGUE,
JOHN A. CARTER.

SIMPSON COUNTY, KENTUCKY.

This day, personally appeared before the undersigned, a justice of the peace for said county, J. H. Cotton, adm'r of Arthur Cotton, and acknowledged to the above to be his act and deed.

Given under my hand, this 17 day of July, 1851.

A. B. COOKSEY,
J. P.

STATE OF KENTUCKY,
Simpson county, sct:

I, as clerk of the county Court of said county, do certify, that A. B. Cooksey, whose name appears to the foregoing certificate, is and was at the time of signing the same an acting justice of the peace in and for said county, duly elected, qualified, and commissioned according to law and constitution of said State, that full faith and credit are due and should be given to all his official acts as such.

In testimony whereof, I have hereunto set my hand and affixed [L. S.] the seal of said Court, at office, in the town of Franklin, this 17th day of July, 1851.

P. H. BOISSEAU,
Clk C. C.
By J. M. READ,
D. C.

STATE OF TENNESSEE,
Davidson county.

On this 18th day of July, 1851, personally appeared Allen Cotton, administrator of Priscilla Cotton, dec'd, and made oath in due form of law that Polly Foxall died three or four years ago, leaving one child, Hardy M. Cryer, who survived her for a short time and died, that she left an executor, who has also died. That the said Polly Foxall, dec'd, was his sister, and one of the children of Priscilla Cotton, dec'd.

ALLEN COTTON, [SEAL.]
Adm'r, &c.

Sworn to and subscribed to before me the day and year above written.

J. H. McEWEN,
J. P.

I hereby certify, that I have long been acquainted with Allen Cotton, the above-named affiant, and that he is in all respects a reputable and veracious person.

J. H. McEWEN, *J. P.*

STATE OF TENNESSEE,
Davidson county.

I, F. R. Cheatham, clerk of the county Court of said county, do hereby certify, that J. H. McEwen, esq., whose genuine name appears to the foregoing affidavit, is and was at the time of signing the same an acting justice of the peace in and for said county, duly elected, commissioned, and qualified as such, and that full faith and credit are due and ought to be given to all his official acts as such in courts of justice and elsewhere.

In testimony whereof, I have hereto set my hand and affixed [L. S.] the seal of said Court, at office, at Nashville, the 18th day of July, 1851.

F. R. CHEATHAM,
Clk.

By L. P. CHEATHAM,
D. C.

STATE OF TENNESSEE, SUMNER COUNTY,
County Court of Monthly Sessions, July 8th, 1845.

I, William S. Munday, clerk of the county Court of monthly sessions, holden at Gallatin, in and for the county of Sumner, do hereby certify, that satisfactory evidence has been exhibited to said Court that Priscilla Cotton was the widow of Thomas Cotton, a captain in the war of the revolution. That she was a resident of the county of Sumner, and State of Tennessee, and had made application for a pension under the act of Congress, and that said Priscilla Cotton died on the 1st day of November, 1843; that she left the following children and legal heirs and representatives, to wit, Polly Foxall, John Cotton, Arthur Cotton, Noah Cotton, all of whom reside in Sumner county, State of Tennessee; Allen Cotton, who resides in Davidson county, State of Tennessee; the heirs of Moore Cotton, the heirs of Sally Strother, also reside in Sumner county, Tennessee; also the heirs of Tabitha Ore, who resides in the State of Illinois, near the post office of Versailles, and that they are her only legal heirs. I further certify, that it appears from the records of this Court that Josiah Walton is the regular appointed and qualified administrator of the estate of the said Priscilla Cotton, deceased, who died intestate.

In testimony whereof, I have hereunto set my hand and affixed [L. S.] the seal of said Court, at office, in Gallatin, this 8th day of July, 1843.

WM. S. MUNDAY,
Clk S. C. C.

STATE OF TENNESSEE,
Sumner county.

Know all men by these presents, that I, Noah Cotton, of Sumner

county, Tennessee, one of the surviving children and heirs at law of Priscilla Cotton, dec'd, do hereby constitute and appoint Smith and Jones, of Nashville, Tennessee, my true and lawful attorneys, for me and in my name to prosecute a certain claim for increase of pension due the surviving children of Priscilla Cotton, dec'd, whose name was inscribed on the pension roll of the Nashville, Tennessee, agency, under act of July 4th, 1836, at the rate of two hundred dollars per annum; hereby revoking all and every power of attorney heretofore made by me to any and every person whatever at any former period, and hereby ratifying all *his* lawful acts of my said attorneys, Smith and Jones, in the premises, in as full and ample a manner as if I were present and acting in person; and I do hereby authorize and request the commissioner of pensions, at Washington city, to deliver to the said Smith and Jones, or either of them, the certificate of pension which may be allowed, and to no one else.

Witness my hand and seal this 5th day of July, A. D. 1851.

NOAH COTTON, [SEAL.]

Signed, sealed, and delivered in presence of—
GEORGE W. ALLEN,
N. D. SMITH.

Acknowledged before me, this 5th day of July, 1851.

WM. SOLOMON, *J. P.*

STATE OF TENNESEE,
Sumner county.

I, John L. Bugg, clerk of the County Court of Sumner county, State of Tennessee, do hereby certify that William Solomon, whose genuine signature appears to the foregoing acknowledgment of power of attorney is and was, at the time of signing the same, an acting justice of the peace in and for said county and State, duly elected, commissioned, and qualified as such according to law.

In testimony whereof, I have hereunto set my hand and affixed [L. S.] my seal of office, in Gallatin, this day of July, 1851.

JOHN L. BUGG,
Clerk.

I hereby certify that the accompanying pages, numbered from 1 to 7, inclusive, are truly copied from the originals on file in the office of the Commissioner of Pensions.

F. F. C. TRIPLETT,
Acting Commissioner of Pensions.

Be it remembered, that F. F. C. Triplett, who has signed the

foregoing certificate, is acting Commissioner of Pensions, and that to his attestations full faith and credit are and ought to be given.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department to be affixed, on this 24th [L. S.] day of July, in the year of our Lord one thousand eight hundred and fifty-two.

ALEX. H. H. STUART,
Secretary of the Interior.

Exhibit B, in Cotton's answer.

STATE OF TENNESSEE,
County of Davidson, ss:

On this 15th day of April, A. D. 1851, personally appeared before me, Thomas Maney, judge of the 6th judicial circuit of the State of Tennessee, Allen Cotton, administrator of Priscilla Cotton, dec'd, and made oath in due form of law that he is the administrator of said Priscilla Cotton, who was the widow of Thomas Cotton, deceased, who was a captain in the North Carolina line army of the revolution, and who died in Sumner county, Tennessee, many years; ago that he left a widow, Priscilla Cotton, aforesaid, who survived him until on or about the 1st day of November, A. D. 1843, when she died; that since her death an application was made by her then surviving children through her (then) administrator, Josiah Walton, for a pension, which was allowed, and a certificate of pension was issued in her name, under act of Congress of July 4th, 1836, at the rate of two hundred dollars per annum—said pension commencing on the 4th day of March, 1831, and terminating on the 1st day of November, 1843, being the day of her death, (as declarant believes.) That declarant is informed and believes, that the amount then allowed was not as much as they were entitled to under the aforesaid act of July 4th, 1836; and that he makes this declaration for the purpose of obtaining an increase of pension under that act—declarant having always understood from his mother, Priscilla Cotton, aforesaid, that her husband, the aforesaid Thomas Cotton, served as a captain for several years during the revolutionary war; but declarant cannot, of course, state the precise duration of his service. That, at the time that the above-mentioned application for pension was made, the then surviving children of the said Thomas & Priscilla Cotton were all properly indentified; and that, as declarant supposes, the proof of their identity is now on file in the Pension Office, at Washington city, together with the proof of the marriage of the said Thomas & Priscilla Cotton, all of which papers, declarant believes, were forwarded by A. Ferguson, esq., and to which declarant refers. And that, since the allowance of the aforementioned pension of two hundred dollars per annum, all of the then surviving children of the said Thomas and

Priscilla Cotton, dec'd, have died, except two, namely, Noah Cotton, now aged about sixty-six years, as he believes, and who resides in Sumner county, Tennessee, and declarant himself, Allen Cotton, who now resides in Davidson county, Tennessee, (aged, as well as declarant recollects, from the best information he has, about seventy years, on the 12th day of March last. Declarant therefore requests that the claim be again taken up and examined, and the said children surviving of the said Thomas and Priscilla Cotton be allowed an increase of pension, to which, as declarant believes, they are justly entitled, amounting, as declarant believes, to two hundred and eighty dollars per annum more than was allowed on the former application before referred to.

ALLEN COTTON, [SEAL.]
Adm'r of Priscilla Cotton, dec'd.

Sworn to and subscribed the day and year above written, before me.

THOS. MANEY,
Judge of the 6th Judicial Circuit, Tenn.

It is hereby certified, that satisfactory proof has been exhibited before me, Thomas Maney, judge of the sixth judicial circuit of the State of Tennessee, (the Court of which is a court of record for said State,) and did prove to my satisfaction that a pension of two hundred dollars per annum under act of July 4th, 1836, was allowed to the surviving children of Priscilla Cotton, dec'd, widow of Thomas Cotton, dec'd, a late captain in the revolutionary war; that since said pension was allowed, all of the surviving children of the said Thomas and Priscilla Cotton have died, except Noah Cotton and Allen Cotton, the above-named declarant, and who is the administrator of the said Priscilla Cotton, dec'd, duly qualified as such according to law.

In testimony whereof, I have hereunto set my hand, this 15th day of April, A. D. 1851.

THO. MANEY,
Judge of the 6th Judicial Circuit.

WASHINGTON CITY, *June 30th*, 1851.

To the COMMISSIONER OF PENSIONS:

SIR: I respectfully file additional grounds on which we will rely upon before you, to show that we are entitled to the possession of the pension certificate when issued in the case of Priscilla Cotton's heirs.

1st. There can be but one administrator to an estate, and so long as he lives and is willing to act, unless removed, he has a right to the assets.

2d. We are the original as well as the present attorneys, and

have never relinquished our right, nor have we at any time lost sight of the claim.

3d. We have at all times furnished the proof necessary to establish the claim.

4th. We object to an administrator being appointed in a different county, when there is one still acting in the county where the deceased last lived.

There are minor children who represent their deceased parents, who received a part of the pension, and will claim a part of any balance to be allowed under the laws of Tennessee.

5th. Mess. Smith & Jones had no right whatever to the claim, being intruders, and taking up the claim solely upon the authority of one of the heirs who has no claims to the pension, except for his own proportionable share; and the intervention of himself, as administrator, or any one else in a different county from the original administrator, when there are no assets, is void. Before an administrator can be appointed the original must have deceased, refused to act, or been removed, or otherwise. An administrator de bonis non to carry out the duties of the first may be appointed, and not otherwise, and whatever Jones & Smith have done is for our benefit, they being adminstrators in their own wrong, (de son tort,) or guardians, and cannot appropriate any of the assets to their own use without authority of Court, allowing the same after the assets are in the hands of the first administrator.

6th. We object to the certificate being given to Smith & Jones, because it violates the rule lately adopted in the Pension Office.

7th. And for other and sufficient causes that we are ready and willing to show in writing or verbally, as the rules of the office permit, we claim the right as first above mentioned to the possession of the pension certificate when issued, in order that justice may be done and satisfaction given to the heirs of the said Priscilla Cotton, deceased. Respectfully,

A. FERGUSON, *Atto. in fact.*

Additional objections.

Because we say that we have never been notified, either verbally or written, by any of the heirs, or any one else in their behalf, that we were to be suspended, or our services discontinued as agents or attorneys, and that Smith & Jones made it known to one of the heirs in different county, without giving notice to the rest of the heirs of Josiah Walton, the lawful administrator, and that Smith & Jones done this for their own benefit to obtain the fee. The foregoing facts we are ready to prove and verify, when and where it shall be required of us from the records and papers now on file in the Pension Office.

A. FERGUSON,

Atto. and Agent for the Administrator and Heirs.

I hereby certify, that the accompanying pages, numbered from 1 to 6, inclusive, are truly copied from the originals on file in the office of the Commissioner of Pensions.

F. F. C. TRIPLETT,
For Commissioner of Pensions.

Be it remembered, that James E. Heath, for whom F. F. C. Triplett, his chief clerk, has signed the foregoing certificate, is Commissioner of Pensions, and that to his attestation full faith and credit are and ought to be given.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department to be affixed, on this 15th [L. S.] day of July, in the year of our Lord one thousand eight hundred and fifty-two.

ALEX. H. H. STUART,
Secretary of the Interior.

Complainant's proof.

A. Ferguson, being sworn and examined by compl't's counsel, states: I was first spoken to about the case by Col. Guild, while he was attending Circuit Court, at Carthage, previous to the death of Mrs. Cotton. He said, or informed me, that it was a valuable claim; that Mrs. Cotton was a captain's widow; that he had drawn up her declaration, with other records and proof, and sent it on to the War Department, at Washington city, but that such was his engagements in the practice of the law, and finding great labor and attention necessary, he preferred I would take the case into my hands and manage it, and referred me to Josiah Walton, of Sumner county, who was prosecuting the claim jointly with him, and was the executor of Thomas Cotton, dec'd. I agreed to do so; and some time afterwards I went down to Sumner county, to the house of Walton, and after ascertaining from him all I could about the claim, we both went to Mrs. Cotton's, and it was fully understood and agreed between myself, Josiah Walton, and Mrs. Cotton, that I should take charge of the claim, and prosecute it to the best advantage, and procure from the War Department all that was due her as the widow of Thomas Cotton, deceased, her late husband, who was a captain in the war of the revolution in North Carolina.

I immediately went to work, investigating the nature of the claim and hunting up proof; set on foot a correspondence directed to such places and points where I expected to procure the necessary proof—one of the most important of which was to ascertain from the comptroller of North Carolina, at Raleigh, the amount of money paid Thomas Cotton for his revolutionary services. Thomas Cotton was a militia captain, and had performed long service; and my recollection is, that one of the difficulties apprehended by Col. Guild was, that his name could not be found on the rolls of the

continental line in the war of the revolution. I had but a short time previous obtained the information that most of the documentary evidence and records of the militia service in North Carolina had been discovered which were supposed to be lost. I procured, after considerable correspondence, from the comptroller of North Carolina, a certified record evidence, for which I paid out of my own money, I think, ten dollars, where Thomas Cotton had been paid upwards of five hundred pounds specie as a captain in the war of the revolution, which, agreeable to my calculation, and which has since proven to be correct, that the widow was entitled to a full pension, at the rate of four hundred and eighty dollars per annum.

I got all the proof necessary that was not already furnished by Col. Guild, such as the marriage, &c., and had no doubt whatever that all things were satisfactory; but owing to the delay, I determined to proceed myself to Washington, and accordingly, in the summer of 1845, as well as I recollect, went to Washington city, and gave my special attention to this claim as well as some others. When the Commissioner of Pensions examined this claim, (Cotton's,) he reported to me that but a part of it could be allowed. I asked him the reason, but he refused, saying it was against the rules of the pension office to give any information. I was convinced at the time that injustice was done in the case, and after considerable argument and conversation with the commissioner, I learned from him that, the way the case then stood, he would not be authorized to allow the balance, but that it was an easy matter to supply the deficiency; that although he could not explain to me the reason at that time, yet my own investigation would be sufficient, and that upon a small defect (not mentioning what) being supplied, the balance I could get allowed at any time thereafter; "that it was a case I could manage easily." I procured the allowance for about two hundred dollars per annum, came home; and the widow Cotton having died previously, it was necessary before the issuing of the certificate to establish the claim of the heirs then living at her death, which were five in number, to wit, Allen Cotton, Noah Cotton, Arthur Cotton, John Cotton, and Polly Foxall, and perhaps, as I do not now recollect, some of these heirs might have died after the death of Mrs. Cotton, and were represented by living children; and I was informed and believe that previovs to her death, (Mrs. Cotton's,) she had other children who had died before she did, to wit, Moore Cotton, Sally Strother, and Tabitha Ore, all of whom have now living children. I received the pension certificate sometime after this last proof, and Josiah Walton, as the lawful administrator of Priscilla Cotton, dec'd, drew the amount then allowed; and as the rule of the War Department then was, and as still adhered to, from the best information I have obtained from the pension office, was restricted to the living heirs at her death, and after paying the expenses, fees, &c., he, Josiah Walton, as I believe and was so informed, paid over the amount to the five heirs first above

mentioned. I never lost sight of the claim, always intended to obtain the balance, being the difference between two hundred dollars and four hundred and eighty dollars per annum, but thought I had better investigate the matter whenever I would go to Washington city. I had every confidence in the high standing and honor of Josiah Walton and Col. Guild, and that they expected of me to prosecute the balance of the claim with effect. Had no fears whatever that they would employ any other attorney or agent; that if the heirs of Mrs. Cotton ever expected anything further, yet they would depend on Mr. Walton to obtain it through me, as my exertions had given, as I was informed, entire satisfaction, consequently I had no fears of being superceded or the claim taken out of my hands. I had also spared no pains in finding out the defect, and was satisfied, after mature reflection and the information partly obtained from Col. Guild, that out of abundant caution, and owing to the decayed memory of Mrs. Cotton, he had only alleged nine months' service in her original declaration, when the proof I furnished showed that her husband had served more than two or three years, the length of service necessary to insure a full pension of four hundred and eighty dollars per annum. I had also ascertained that the pension office had so far relaxed their rules as to allow the duly authorized attorneys to call for and examine the papers in any case they were employed in at the pension office. I was about to proceed to Washington in the year 1850 and 1851, but was prevented, first by sickness in my family, and afterwards the death of one of them, and could not get ready before the early part of the summer of 1851.

I happened at the house of Wm. E. Jones, who married a sister to my wife. My family were then on a visit, and we conversed a great deal about claims. He asked me about the Cotton claim, why no more was allowed. I explained to him the reason, and I, not expecting he intended any advantage, gave him the particulars of the case. He said it was very easy to get the balance. I replied, I knew it was; that I was going to get all my claims ready as soon as I could; that I intended going to Washington, and trying to get all my claims allowed if I could. I reflected, however, afterwards on the nature of the conversation, but still I rested satisfied that he intended nothing wrong; nor did he then or at any time before or afterwards mention or intimate to me that he intended to get the claim or interfere with me in any way whatever.

It is true, we had a lawsuit and our misunderstandings, but we had become friendly; our families visited each other; and I had hoped all things would afterwards be conducted with a strict regard to justice and honor, and nothing should hinder us from the strict rules of friendship. One thing I remarked in another conversation afterwards. He asked me what sort of a man Josiah Walton was. I told him he was a high-minded, honorable man, and stood high in his neighborhood. He said no more, but I began to suspect all was

not right, and made all the haste I could to get my business ready to depart for Washington, and called on Col. Guild and Walton for the statements necessary in the Cotton case; informed Mr. Walton and Guild, that I feared Jones was about to take the claim from us unjustly and deprive us of our rights; that I had expended a great deal of time and money in the case; had furnished all the proof necessary to obtain a full pension; that all that was necessary was to amend the declaration and allege the full amount of services shown by the proof, when the balance would be allowed. Accordingly I attended at Gallatin county Court, arranged all the papers, with a new power of attorney from the administrator, Josiah Walton, to prosecute the claim for the benefit of the heirs; and lest there should be any danger in delay, I forwarded the power of attorney in advance of my going to Washington, accompanied with a letter claiming a preference over any other attorney or agent whatever in the Cotton claim.

I had ascertained from Mr. Walton that none of the heirs in Sumner county had any knowledge of any movements whatever in the matter, and all of the heirs lived there, as well as recollected, except Allen Cotton, who lived in Davidson county; and my suspicions had become very strong that Jones was tampering with him secretly, with a view of reaping the whole profits of the balance of the claim, and thus deprive me, Walton, and Guild of all the hard labor I had performed in the case. That if my suspicions were true, and he obtained the claim, he would do so without any additional labors or services on his part; that all the proof to be required in the case was already on file and in my possession to be filed; that if he obtained the money thus secretly, it would be a fraud on our rights, knowing at the same time that Walton and the heirs in Sumner county relied on my exertions in carrying out all the business for their benefit to a satisfactory conclusion.

Accordingly, in June, 1851, I left Nashville, for Washington city, by way of Chattanooga and Charleston, and on my way through North Carolina, left the railroad and went up to Raleigh, and spent a few days in search of the old revolutionary records—passed on to Washington, and met Jones, the defendant in this case, at Aquia*deck*, when about getting on board the steamboat to get up to Washington. A few words of enquiry passed between us, but nothing about the Cotton case; but from his manner and hurry to leave on the cars, I had but little doubt that he had hurried on, passed me at Raleigh, in order to have the claim allowed, and get the certificate into his possession before I reached there.

When I reached Washington, I waited on the Commissioner of Pensions, and was informed by him that Mr. Jones had been there, urging the issuance of the pension certificate, but that owing to the power of attorney I had sent on in advance, he had suspended action on the same, nor would he issue the pension certificate until he knew all about the matter. I represented to him that I was the

only legally authorized attorney or agent. That to give the certificate to any other attorney would be a fraud on the rights of the lawful administrator and the minor children. I found out then from him what my suspicions previously were now proved to be but true, that Wm. E. Jones had procured Allen Cotton, of Davidson county, to be administrator of his mother, Priscilla Cotton, deceased, and through him was endeavoring to get hold of the claim, by getting possession of the pension certificate; thus enabling them to draw the money, make terms to the rest of the heirs and attorneys who had performed all the drudgery and labor in the case, and deprive them if they choose of every cent.

I spared no pains in placing before the Commissioner of Pensions the real facts in the case—that Josiah Walton was the lawful administrator; had distributed already part of the fund; that Mrs. Cotton had died in Sumner county leaving numerous heirs, part of whom were minors, and represented by guardians; that Mrs. Cotton left no estate in Davidson county for Allen Cotton to administer upon, and that his appointment in Davidson was improperly obtained for the purpose of getting hold of the fund above mentioned.

Mr. Jones employed Judge Joseph Bryan to represent him and Allen Cotton, and thus the contention became warm and animated from day to day—the Commissioner refusing to decide until we could agree among ourselves. Things were in this situation for some two weeks, when a proposition was made by Judge Bryan, Jones' counsel, that the pension certificate should be issued and sent to the chairman of the county Court of Sumner, and that the county Court of Sumner should distribute or say how the fund should be distributed agreeable to the laws of Tennessee. I agreed to this, but Mr. Jones refused, and in a day or two afterwards it appeared that in the meantime he had, or during the two weeks we were contending, telegraphed to either his partner, William H. Smith, of Nashville, a son of the agent for paying pensions, or to Allen Cotton, who procured a revocation of the power of attorney made to me by Noah Cotton, one of the heirs, living in Sumner county, and sent in a telegraph dispatch to the commissioner, who handed it to me. I then insisted, as representative of the minor heirs, through the power of attorney made to me by Josiah Walton. I remained in Washington about three weeks, during which time Jones, through his counsel, was enabled to prevent the decision of the Commissioner of Pensions, and I could not get the certificate of pension; and then my time having expired, I procured the services of John T. Neely, esq'r, to attend to the case, wrote out a lengthy argument, filed it, and came home, and afterwards learned that Jones had finally succeeded in obtaining possession of the pension certificate, and he, through Allen Cotton, of Davidson county, as I have been informed and believe, drew somewhere about thirty-five hundred dollars.

I further state, as I have above stated in part, that from the best

information I have been able to obtain, which I fully believe to be, that Mrs. Cotton was a resident, for many years previous to her death, in Sumner county. That her husband had previous to his death lived in Sumner county, and that he died there. That Mrs. Cotton left all her children, or most of them, or their children, residents in Sumner county, except Allen Cotton, who lived in Davidson county. That all the estate both real and personal of Thomas Cotton, and afterwards his widow, was settled by Josiah Walton, first as executor of Thomas Cotton, deceased, then as administrator of Priscilla Cotton, his widow. That William E. Jones well knew that Josiah Walton was the lawful administrator in Sumner county; that he never could accomplish his schemes by approaching or tampering with Walton, the lawful administrator. That the appointment of Allen Cotton, in Davidson county, where there were no assets of his father's or mother's estate, was solely for the purpose of obtaining possession of the pension fund, as before stated, and that he, Jones, well knew at the time Walton would not give up the claim, all of which I stated myself to Jones.

I further state, that from the time said Jones and Allen Cotton engaged in the claim until they obtained possession of the fund, my opinion is, they could not have furnished any additional evidence more than had been done. The labor had all been done that was essential, and if they performed any services, must be of small importance; and the expense and trouble would, in my opinion, amount to but little, and would, I have no hesitation in saying, appear to have been done more for show than anything else.

I further state, that in the prosecution of claims before the department at Washington city, when an attorney or agent is employed to prosecute a claim, he acquires a right to all the benefits arising from the claim, and any interference by another attorney, without the consent of the first, is considered a fraud upon his rights, unless otherwise named in his contract. This is the practice as far as I have experienced. I never knew but two exceptions to this rule of practice; one is Mr. Jones, and one other who lives in Kentucky, who take advantages such as I have mentioned, and further this deponent saith not.

A. FERGUSON.

Exceptions.

Defendants, Allen Cotton and Wm. E. Jones, by their solicitor, file the following exceptions to the foregoing deposition of A. Ferguson:

1st. Said dfdts. say that they had no notice of the taking of said deposition.

2d. That it was error in the clerk and master in directing that notice should be served upon the defendant, Noah Cotton, alone, as

he is merely nominal defendant, the defendant, Allen Cotton, being the adm'r of Priscilla Cotton, and the directly responsible and solely accountable defendant; and these defendants say, in point of fact, that no sufficient notice was given the dfdt., Noah Cotton, of the taking of said deposition.

3d. The said dfdts. except to said deposition, on the ground that said Ferguson is incompetent to make proof in this cause, he being interested in the matters at issue—he having agreed originally to procure the pension for a certain proportion of the same.

4th. Dfdts. are informed and believe that the counsel of the compl'ts propounded one question to the witness at 11 o'clock in the morning, and left, and the witness, until 11 o'clock at night on Saturday; so, if the dfdt's. had attended, they could not have cross-examined.

BRIEN & MUNDAY,
Sol's for Allen Cotton and Jones.

I overrule the exceptions, upon the ground that notice was served upon Noah Cotton under the order of the clerk and master, he being a party interested, and the only one in this county and in town the day the deposition was taken. From which the defendants appeal to the chancellor.

W. M. BLACKMORE,
C. & M.

July term, 1845.

Ordered by the court, that Josiah Walton be appointed administrator of all and singular the goods and chattels, rights, and credits that are of the estate of Priscilla Cotton, deceased. Thereupon the said Josiah Walton, together with Jo. C. Guild, his security, appeared in open court, entered into and acknowledged their bond to James C. Jones, governor, &c., in the penal sum of one thousand dollars, conditioned as the law directs, and took the oath of administrator prescribed by law.

JOHN L. BUGG,
Clerk.

This day it satisfactorily appeared to this court by proof that Priscilla Cotton was the widow of Thomas Cotton, a captain of the war of the Revolution; that she was a resident of the county of Sumner, and State of Tennessee, and had made application for a pension under act of Congress, and that the said Priscilla Cotton died on the first day of November, 1843, and that she left the following children and legal heirs representatives, to wit: Polly Foxall, John Cotton, Arthur Cotton, Noah Cotton, Allen Cotton, who resides in Davidson, State of Tennessee, all of whom reside in Sumner county, Tennessee; the heirs of Moore Cotton, and the heirs of Sally

Strother also reside in Sumner county, Tennessee; also the heirs of Tabitha Orr, who reside in the State of Illinois, near the post office of Versailles; and that they are her only legal heirs, all of which is ordered to be certified.

JOHN L. BUGG, *Clerk.*

Defendants.

"Copy of the original pension certificate issued to Noah and Allen Cotton, which *which* original was delivered to the pension agent when the pension was paid, and is now on file in Washington city with his vouchers," "filed Oct. 4th, 1852," viz:

DEPARTMENT OF THE INTERIOR. CLAIM FOR MILITARY SERVICE.

I certify, that in conformity with the law of the United States, Priscilla Cotton, deceased, was entitled to a pension under act 4 July, 1836. Her children, Allen and Noah Cotton, are entitled to the amount, at the rate of four hundred and eighty dollars per annum, from the 4 March, 1831, to 1st of November, 1843, when she died—payable to Allen Cotton, administrator, after deducting former payments at the rate of two hundred dollars per annum.

{SEAL OF DEPARTMENT OF THE INTERIOR.} Given at the Department of the Interior, this eleventh day of September, one thousand eight hundred and fifty-one.

ALEX. H. H. STUART,
Secretary of the Interior.

Examined and countersigned.

J. E. HEATH,
Commissioner of Pensions.

TREASURY DEPARTMENT,
Third Auditor's Office, September 18, 1852.

I certify that the foregoing is a true copy on file in this office.

JOHN S. GALLAHER, *Auditor.*

Be it remembered, that John S. Gallaher, esquire, who certified the foregoing transcript, is now, and was at the time of doing so, third Auditor of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof, I, Thomas Corwin, Secretary of the Treasury of the United States, have hereunto subscribed my name, and caused to be affixed the seal of this department, at the [L. S.] city of Washington, this eighteenth day of September, in the year of our Lord one thousand eight hundred and fifty-two.

THO. CORWIN,
Secretary of the Treasury.

"DEPARTMENT OF THE INTERIOR." "CLAIM FOR MILITARY SERVICE."

I certify, that, in conformity with the law of the United States, Priscilla Cotton, deceased, the widow of Thomas Cotton, was entitled to a pension under act 4th July, 1836, and having died on the 1st November, 1843, her children, Allen and Noah Cotton, are entitled to the amount, at the rate of four hundred and eighty dollars per annum, from 4th March, 1834, to 1st November, 1843, when she died—payable to Allen Cotton, administrator, after deducting former payments at the rate of two hundred dollars per annum.

Given at the Department of the Interior, this eleventh day of [L. S.] September, one thousand eight hundred and fifty-one.

ALEX. H. H. STUART,
Secretary of the Interior.

Examined and countersigned.

J. E. HEATH,
Commissioner of Pensions.

("Endorsed.")

PENSION OFFICE, NASHVILLE, *Sept.* 27, 1851.

I do hereby certify, that the within is a true and faithful copy of an original certificate of pension which has been surrendered to me by Allen Cotton, administrator of Priscilla Cotton, dec'd, upon the payment of the pension to him, for the benefit of himself and Noah Cotton, as directed by the Commissioner of Pensions.

This certificate is given by request of Allen Cotton.

J. W. SMITH,
Pension Agent.

Complt's except to this copy, and say, that the same ought not to be read, as it is not duly authenticated. It has not been sworn to. March 31st, 1853.

BARRY,
Sol'r for Compl'ts.

(Copy.)

DEPARTMENT OF INTERIOR,
Pension Office, April 24, 1853.

Hon. ROBERT MCCLELLAND,
Secretary of the Interior:

SIR: The question involved in the decision of the case of Benjamin Wheeler, dec'd, under the act of June 7th, 1852, is this: Can an heir of a deceased child of a revolutionary soldier, who died without establishing his claim to a pension under said act, and without leaving a widow, establish the claim of such soldier, and receive the amount which is due at the time of his death?

It is admitted that, if the child had died before his father, his heir cannot establish the claim and receive the money, but if the child survived his father, it is claimed that his heir may do it.

The decision in this case assumes that the heir is not entitled in either case. The benefits promised to the various persons named in this act are mere gratuities, intended for the personal benefit of those on account of whose services they are promised. They are not absolute gifts, but upon the condition that the claimant "furnish satisfactory evidence that he is entitled to receive the same in conformity to the provisions of this act." Unless, therefore, this evidence be furnished, no right vests in the donee. He receives nothing that he can convey by will or deed, or that can be transmitted by any law of descent.

Again, these benefits were designed to provide the means of subsistence and comfort of the individual who rendered the service. This is inferible from the act itself, which provides "that so much of the said pay as accrued before the approval of this act shall be paid to the person entitled to the same as soon as may be;" and lest a doubt might remain as to what should become of the balance due at the death of pensioner, the same act provides "that in case of the death of any person embraced by the provisions of this act, during the period intervening between the semi-annual payments directed to be made by said act, the proportional amount of pay which shall accrue between the last preceding semi-annual payment and the death of such person, shall be paid to his widow, or, if he leave no widow, to his children.

Here it will be seen that no part of the gratuity is left to become a part of the decedent's estate, to be made liable for his debts, and subject to distribution, according to any rule of descent or inheritance, but is disposed of by Congress to those who are nearest to him by ties the most sacred and dear. If it had been the intention to have had this fund or any part of it distributed to the legal heirs of the decedent, as a part of his estate, it is strange that this small amount had not been left subject to those laws. And if any heirs were to have been made the beneficiaries of the government, it would have been more strange had the selection fallen upon the heirs of the child rather than the heirs of the ancestor, being the person who rendered the meritorious service. When a person died who was entitled to a pension, but whose name was not inscribed upon the rolls in his lifetime, it became a practice under this law, at a very early day, to pay the whole amount due such person at the time of his death to his widow, or, if he left no widow, to his children. The legality of this practice was for a long time questioned by the lamented Judge Woodbury, on the ground that a pension was a personal matter, and upon the decease of the claimant did not descend to his heirs or representatives, and was finally acquiesced in by him, upon the Commissioner's assurance that the "practice originated in a written rule which emanated im-

mediately from the Secretary of War, in 1832, and that the principle had been recognized by Congress. It then became an important question how these arrearages of pension, as they were called, should be treated in case the person entitled died without leaving a widow. Were they to become a part of his estate, liable to his debts, and subject to distribution, according to the laws of the State in which the deceased last dwelt, or were they to be disposed of by Congress? It seems that Congress still claimed the right to control its own gifts, and to designate the beneficiaries who were to enjoy its bounty. Accordingly, the act of June, 1840, provides, that in case any male pensioner shall die, leaving children, but no widow, the amount of pension due to such pensioner at the time of his death shall be paid to the executor or administrator on the estate of such person, for the sole and exclusive benefit of the children, to be by him distributed in equal shares, and the same shall not be considered as part of the assets of said estate, nor liable to be applied to the payment of the debts of said estate in any case whatever. By the terms of this statute, the amount due to male pensioners at the time of his decease, if he left children but no widow, *must* be *paid* to the *executor* or *administrator* on the *estate* of *such pensioner*, for the *sole and exclusive benefit of the children*. But suppose there be no children, shall the money be paid to the executor? If so, for whose use? It is no part of the estate of the deceased, and there is no person who can compel the executor to account for the money. In the case of Elizabeth Crajer, Gov. Marcy, April 21, 1845, being then Secretary of War, decided that, there "being no child or children of the deceased, the *payment cannot be made to an executor.*

If payment cannot be made to an executor, to whom can it be made? There is no widow to receive it, and no children, and Congress has not designated any other person or class of persons to whom payment can in any case be made. The same view of this subject was entertained by Judge Mason, of Va., while Secretary of War. In an opinion given by him on the 14th day of July, 1846, in speaking of the pension laws passed since the act of March 2, 1829, he says: "The more enlarged and comprehensive system of pensions introduced by laws subsequently passed, founded in gratuitous bounty to the persons who were its beneficiaries, led to the act of 1840. By the provisions of the laws, care is taken to prevent the arrears of pension in any case *becoming assets* for the payment of debts, or for distribution, according to any rule of *descent* or *inheritance*, except that which is prescribed by Congress. But the pension being a bounty conferred by Congress, the authority exists to withdraw it, or to prescribe the condition in which it be paid, and the person or persons who are to receive it. In making the payment, the executive must look to the law for authority. There is no such authority to make payment to the administrator when the pensioner died leaving no children. It is true, there are

precedents in this office for issuing certificates to administrators of deceased soldiers. In some instances they purport to have been issued for the benefit of the children and grandchildren of the deceased; in others for the benefit of the grandchildren alone; in others still for the benefit of the children living at the decease of the soldier, and the grandchildren whose parents had since deceased; and in one case where there were neither children nor grandchildren.

In examining these precedents, I have not been able to discover any well settled rule by which they are governed. Each seems to have depended upon its own circumstances and the caprice of the person who allowed it. All of them being, in my judgment, against the plain provisions of the law, are of no binding authority, and should be disregarded.

Inasmuch, therefore, as Benjamin Wheeler dec'd without leaving a widow, and inasmuch as his children all deceased before the claim of said Benjamin was established according to the provisions of the act of June 7, 1832, I am of opinion and have decided that a certificate cannot now be issued, because there were no persons living when said claim was established who were entitled to receive the gratuity promised to the said Benjamin Wheeler in the act aforesaid.

I have the honor to be, very respectfully, &c.,

(Signed) L. B. WALDO,
Comm'r of Pensions.

(Copy.)

DEPARTMENT OF THE INTERIOR,
Washington, May 5th, 1853.

SIR: I have examined the reasons assigned by you for the rejection of the claim of the grandchildren of Benjamin Wheeler, deceased, to the pension which he would have been entitled to receive under the act of 7th June, 1832, had he lived, and I fully concur with you in the conclusion to which you have arrived.

Your decision is therefore affirmed, and the papers in the case are herewith returned.

I am, sir, respectfully, your obedient servant,

(Signed) R. McCLELLAND,
Secretary.

Hon. L. B. WALDO,
Comm'r of Pensions.

I hereby certify, that the accompanying pages, numbered from one to eight, inclusive, are truly copied from the originals on file in the office of the Commissioner of Pensions.

L. B. WALDO,
Commissioner of Pensions.

Be it remembered, that L. B. Waldo, who has signed the foregoing certificate, is Commissioner of Pensions, and that to his attestations full faith and credit ought to be given.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department to be affixed, on this the [L. S.] eighteenth day of May, in the year of our Lord one thousand eight hundred and fifty-three.

R. McCLELLAND,
Secretary of the Interior.

April term, 1853.

This day the compl'ts moved the Court for leave to amend the bill, by inserting the names of Josiah Walton, administrator of Priscilla Cotton, and L. B. Edwards, administrator of Moore Cotton, as compl'ts in the original bill, which was done without objections. And by consent, the answers of defendants stand as answers to the amended bill, and the cause to remain open until next term for proof on both sides.

October, 1853.

Is continued as upon the affidavit of defendants with leave to cross-examine A. Ferguson upon notice, to be done in three months.

Final decree. April term, 1854.

Be it remembered, that these causes, being consolidated, came on to be heard before Chancellor Ridley, upon the 5th day of April, 1854, upon the pleadings and proof in the causes. Whereon it satisfactorily appeared to the Court that Priscilla Cotton was the widow of Thomas Cotton, who served in the revolutionary war, and that she was entitled, as widow of Capt. Cotton, to a pension from the Government of the United States, and that previous to her death she had made her declaration, and had applied to the government for said pension. That said Priscilla departed this life intestate in the county of Sumner, in the year 1843, and that compl't, Josiah Walton, took out letters of administration on her estate in the county of Sumner, where the intestate died, and received the certificate of pension, at the rate of $200 per year, from 1831 up to her death, in 1843. And the following were her children living at her death: John Cotton, Arthur Cotton, Polly Foxall, Allen Cotton, and Noah Cotton. And that the administrator distributed and paid said fund to said five children. And that said Josiah Walton, adm'r as aforesaid, was engaged in prosecuting said pension claim for an extension of said claim and for the increase pay, and that he and his attorney had and continued to file evidence in support of said extension. And it further appeared to

the Court, that Allen Cotton applied to the county Court of Davidson, and took out letters of administration on the estate of Priscilla Cotton, knowing at the time that Josiah Walton was the lawful administrator of said estate, and was prosecuting said claim for an increase of pension; and the intestate not dying in the county of Davidson, or having any estate therein, said appointment of Allen Cotton as administrator was void. It further appeared, that the said Allen Cotton, Noah Cotton, and William E. Jones procured the certificate of the increase pension from the pension department, dated 17th Sept., 1851, increasing said pension to $300 from 4 March, 1831, to 1st Nov., 1843, and that the said Allen Cotton, Noah Cotton, and W. E. Jones collected and received from the government the sum of thirty-five hundred dollars, on the day of October, 1851, and divided the same among themselves as they agreed on.

It further appeared, that after the death of said Priscilla Cotton, and before the receipt of said certificate, Polly Foxall, Arthur Cotton, and John Cotton departed this life, leaving children; and the parties mentioned in the pleadings are the representatives of their estates respectively. The Court is of opinion, and so decrees, that the children living at the time of the death of Priscilla Cotton is entitled to receive the increase pension of $3,500, and that the administrator of her estate was on demand to receive and pay it over to said children; and that the children of such child as shall die after the death of the pensioner is entitled to receive their shares of his or her parent, and that said interest of any of the children is not liable to execution of the same *can* be attached for debt.

The Court therefore decrees that said representatives of Arthur Cotton, John Cotton, and Polly Foxall are entitled to $\frac{3}{5}$ths of said $3,500 and interest, to be paid over to said children, and that said defendants, Noah Cotton, Allen Cotton, and Wm. E. Jones, who have received said fund, are liable to pay over said $\frac{3}{5}$ths of $3,500, amounting to $2,100, with interest as aforesaid, to be paid over to the children of Polly Foxall $\frac{1}{3}$, to the children of Arthur Cotton $\frac{1}{3}$, and the children of John Cotton $\frac{1}{3}$, after paying the cost and expenses of their suit. It is further decreed, that the cost of this cause be paid out of the fund in the hands of said defendants, and fi. fa. issue.

From which decree the dfd'ts pray an appeal to the next Supreme Court, which sits at Nashville in December next, and obtain the same, upon giving bond with Wm. Henley, security conditioned and payable as the law directs.

Appeal bond.

Know all men by these presents, that we, Allen Cotton, Noah Cotton, William E. Jones, and William Henley, are held and firmly

bound unto Josiah Walton, adm'r of Priscilla Cotton; James Cryer, executor of Polly Foxall; Henry F. Cotton, executor of John Cotton; Jesse Cotton, administrator of Arthur Cotton; L. B. Edwards, guardian of the minor children of Moore Cotton, John Thomas Cotton, Priscilla and husband, Edmunds, Ann M. Payne; and Thomas C. Stalker, guardian of Edward R. Cryer and Priscilla R. J. Cryer, and to Martha Ann, Betsey Claiborne, and Mary Cage Cryer, Joseph A. Anthony, and his wife Elizabeth Elenora; C. W. Bridgwater, administrator of Thomas C. Cryer, to Emily C. Cryer, Hardy M. Cryer, and Chesley B. Cryer, the complainants, in the penal sum of four thousand five hundred and seventy-eight dollars, for the which payment, well and truly to be made, we bind ourselves and each of us, our heirs, executors, and administrators jointly and severally firmly by these presents. Sealed with our seals, and dated this 6th day of April, 1854.

The conditions of the above bond are such, that whereas the above bound Allen Cotton, Noah Cotton, and William E. Jones, dfd'ts, have prayed and obtained an appeal from the decree this day rendered by the chancery Court at Gallatin, in the causes of Josiah Walton, adm'r, et als., vs. the said Allen Cotton, et als., as the same parties, dfd'ts, by which decree of said Court the compl'ts recover of the said dfd'ts a portion of a pension fund which has come to the hands of the said dfd'ts, which portion with interest now amounts to about the sum of twenty-two hundred and eighty-nine dollars, to the next term of the Supreme Court of the State of Tennessee, to be holden at Nashville on the first Monday in December next: now, if the said Allen Cotton, Noah Cotton, and Wm. E. Jones shall prosecute their said appeal with effect, or in case of failure shall pay and satisfy such decree and cost as may be made against them, then this obligation to be void; otherwise to remain in full force and effect.

ALLEN COTTON, [SEAL.]
By W. S. MUNDAY,
Atto.
WM. E. JONES, [SEAL.]
By W. S. MUNDAY,
Atto.
NOAH COTTON, [SEAL.]
WM. HENLEY, [SEAL.]

STATE OF TENNESSEE,
Sumner county.

I, Nimrod D. Smith, clerk and master of the chancery Court at Gallatin, for the county and State aforesaid, certify the foregoing forty-four pages to be a full, true, and perfect transcript of the record of the case of Cotton et als., vs. Cotton et als., and of Stalker, guardian, &c., et als. vs. Cotton et als., as the same now appears of record and on file in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said Court, at office, in Gallatin, this 15th day of [L. s.] June, A. D. 1854, and 78th year of American independence.

N. D. SMITH,
C. and M.

Cost. Original bill of Cryer's.

Clerk Blackmore, pros. bond 50 c.; security 18 c.; rules 25 c.; 3 copies bill $1 50; 2 spa. to ans'r 1 50; rep. 25; order to amend bill 25; contin. 25; paid postage 5 c.; hearing 12 c.....	$4 85	
Sh'ff Barnes, Davidson county, 2 spa. to answer	1 25	
" Geo. Love, Sumner " 1 " " "	62	
		$6 72

On Stalker's bill.

Cl'k Blackmore, rules 25 c.; inj'n bond $1; 2 writs $2; 2 spa. 1 50; 3 copies bill $3 13; order publication 75 c.; repl. 25 c.; aff'dt 18 c.; postage p'd 10 c.; hearing 12½.....	$8 28	
Sh'ff L. W. Fussell, Davidson co., 2 injn. $2; 2 spa. to ans'r 1 25.....	3 25	
" Geo. Love, Sumner " 1 " $1; 1 attach $1; 3 spa. to ans'r 1 88.....	3 88	
Tenth Legion newspaper for publication.....	3 00	
Cl'k Smith, pro confesso 75 c.; bill cost 25 c.....	1 00	
		$19 41

Consolidated.

Cl'k Blackmore, spa. for 2 witnesses 25 c.; taking 1 depo. $1.....	1 25	
Sh'ff Geo. Love, serving notice for depo.....	50	
" S. Allison, Smith co., summoning 1 witness.	25	
Const. J. W. Judd, summoning 1 witness.....	25	
Witness Adam Ferguson, 1 day, Smith co. $1; 70 miles $2 80.....	$3 80	
" " " 3 days $3; 70 miles 2 80; tolls 10 c.; not ⋈ exam'd.	5 90	
	9 70	
Cl'k Smith, decree $1; order 75 c.; appeal and bond $1.....	2 75	
	21 75	
This transcript.....	19 00	
		$33 70
		$59 83

And now, at a Supreme Court of the State of Tennessee, began and held at the capitol, in Nashville, on the first Monday in December, 1854, present, the Hon'l Robert J. McKinney, Robert L. Caruthers, and A. W. O. Totten, judges of said Court, when the following proceedings were had in said cause:

COTTON, adm'r, vs. COTTON and als.,
and
STALKER, guard., vs. A. COTTON and als.

In these causes the attorneys for the parties agree to waive all exception to the competency of his honor, Judge Caruthers, who is incompetent to sit by reason of affinity to a portion of the parties litigant. Whereupon, it is ordered by the Court, that the said agreement of counsel be entered on the minutes of this Court. And afterwards, on a subsequent day of said Court, to wit, on the 12th of January, 1855, the following decree was rendered in said causes:

COTTON'S adm'r and others
vs.
ALLEN COTTON and others,
and
THOS. STALKER and others
vs.
ALLEN COTTON and others.

These causes coming on to be heard on this and a former day of the term, before the Hon'l R. J. McKinney, A. W. O. Totten, and R. J. Caruthers, judges of the Supreme Court, upon the transcript of a record from the chancery Court at Gallatin, and the Court being of opinion that there is error in the decree of the chancellor, doth reverse the same. And it appearing to the satisfaction of the Court that Thomas Cotton, a captain in the American army during the revolutionary war, departed this life many years ago, in Sumner county, Tennessee, leaving him surviving his widow, Priscilla Cotton, and eight children; that the widow applied for a pension and arrears of pension, in right of her deceased husband, but before the same was acted upon by the proper department of government she died intestate in said county, about 1st Nov., 1843; and complainant, Josiah Walton, qualified as administrator, and renewed the application; and such proceedings were had, that in 1845 a certificate was issued for the amount then believed to be due, and the fund received was divided among the five surviving children of said Thomas Cotton—three of his children having died after him, but before the fund was received, leaving issue, which issue and their descendants are complainants in the amended and supplemental bill in this cause. It further appearing, that previous to the year 1851, three of the remaining children of Thomas Cotton

also died, whose heirs and representatives are complainants in the original bill—leaving the defd'ts, Allen Cotton and Noah Cotton, the sole surviving children of the said Thomas; that the said Allen and Noah employed the defendant, Jones, and one Smith to make another application to the pension department, and prosecute their claim for an additional allowance in right of their deceased father. And that such proceedings were had upon this application, that a certificate for the sum of $3,500 issued from the said department in favor of the said Noah and Allen, upon which the money was received, a portion of which is claimed by the complainants in these cases, as the personal representatives and heirs of Thomas Cotton. It further appearing, that previous to the issuance of this last certificate, the said complainants, by their agent and attorney, appeared and contested the right of the defendants, Allen and Noah, to the same, and setting up the claim of these complainants; and that the proper officers of the general government, to whom the decision of such questions is in the first instance entrusted, after hearing the parties and considering of the case, decided that the said Allen and Noah were exclusively entitled to the amount due under the acts of Congress in such case made and provided. And the Court being of opinion, that by proper construction of the pension laws of Congress, the bounty given by the acts under which the money in controversy was claimed and obtained, extends only to the children of the deceased pensioner, and not to the grandchildren or more remote descendants, and that the defendants, Allen and Noah Cotton, are entitled to the whole of the fund received, to the exclusion of the complainants—

It is therefore ordered, adjudged, and decreed that complainants' bill be dismissed, but without costs—it being further ordered that the defendants, Allen and Noah Cotton, pay all the costs, for which execution may issue.

JOSIAH WALTON, adm'r of Priscilla Cotton, dec'd, and others,
vs.
NOAH COTTON, ALLEN COTTON, and WM. E. JONES.

From the decree and judgment in this cause, the complainants, Josiah Walton, adm'r of Priscilla Cotton, dec'd, and others, pray for a writ of error to the Supreme Court of the United States, to be holden at Washington, on the 1st Monday in December next, and having produced a writ of error, and given bond and security, which have been allowed, according to the act of Congress, and also lodged a copy of said writ of error and the original citation, a copy of which has been acknowledged to be received by the attorneys for Noah Cotton, Allen Cotton, and W. E. Jones, it is ordered that the original writ of error and citation, together with a

copy of the record in this cause, be made out by the clerk of the Supreme Court, at Nashville, and transmitted to the said Supreme Court of the United States.

Given under my hand this 3d day of March, 1855, and 79th year of the independence of the United States.

ROBERT L. CARUTHERS,
One of the Judges of the Supreme Court of Tenns.

STATE OF TENNESSEE.

I, J. P. Clark, clerk and master of the Supreme Court of the State aforesaid, at Nashville, do hereby certify that the foregoing is a full and true copy of the record and proceedings had in said Court in said cause, as the same appears on record in my office, together with the original writ of error and citation, with the acknowledgment of counsel of notice of said citation and order for writ of error, &c.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said Court, at office, in capitol, at Nashville, this [SEAL.] 15th day of March, A. D. 1855, and 79th year of the independence of the United States.

J. P. CLARK,
Cl'k and M.

UNITED STATES OF AMERICA, ss:

The President of the United States, to the judges of the Supreme [SEAL.] Court of Tennessee, greeting:

Because in the record and proceedings, as also in the rendition of the judgment and decree of a plea which is in the said Supreme Court, before you or some of you, between Josiah Walton, ad. of Priscilla Cotton; James Cryer, executor of Mary Foxall; Henry F. Cotton, executor of John Cotton, dec'd, and als., complainants, and Noah Cotton, Allen Cotton, and Wm. E. Jones, are def'ts, a manifest error hath happened to the great damage of the s'd Josiah Walton, adm. of Priscilla Cotton; James Cryer, ex'tr of Mary Foxall; Henry F. Cotton, ex'tr of John Cotton, dec'd, and others, as by their complaint appears: we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, we command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 1st Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected by the s'd Supreme Court, may cause further

to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the hon'ble Roger B. Taney, Chief Justice of the said Supreme Court, the 3d day of March, in the year of our Lord 1855, and of the independence of the United States 79th.

JACOB McGAVOCK,
Clerk of Circuit Court of the United States for the district of Middle Tennessee.

To Allen Cotton, Noah Cotton, and Wm. E. Jones:

You are hereby cited to attend in the Supreme Court of the United States, at Washington city, on the first Monday of Dec'r next, and defend, as you may see fit, the suit lately decided in our Supreme Court of the State of Tennessee, of James Cryer, exe'or of Mary Foxall, and others, children and grandchildren of Priscilla Cotton and their representatives, against you, in which a decree was entered against the complainants and in your favor, upon the construction of the pension acts of Congress, and in relation to conflicting claims between you and them to the arrears of pension due to said Priscilla, as the widow of Thomas Cotton, an officer in the revolutionary war, at the time of her death, and in which case the said complainants have prayed for a writ of error for revision of the said decree against them and in your favor, in the said Supreme Court of the United States, for errors assigned in the said decree and final judgment in your favor, and for the reversal of the same. You will, therefore, attend on the day designated, and fail not.

Witness Robert L. Caruthers, one of the judges of the Supreme Court of Tennesee, and presiding in said Court at the rendition of the said final decree, this 3d day of March, 1855.

ROBERT L. CARUTHERS, [L. S.]
Judge, &c.

[ENDORSED:] Jos. Walton, ad'r of Priscilla Cotton, and als. Citation. A. Cotton, N. Cotton, and Wm. E. Jones.

We acknowledge service of this process for the appellees. March 13, 1855.

EWING & COOPER.